CLERK'S COPY.

192

749458
Sup. Ct.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1946

No. 103

THE GOSPEL ARMY, A CORPORATION,
APPELLANT,

vs.

THE CITY OF LOS ANGELES, BOARD OF SOCIAL SERVICE COMMISSIONERS, DEPARTMENT OF SOCIAL SERVICE, AND DAN O. HOYE, CITY CONTROLLER

APPEAL FROM THE SUPREME COURT OF THE STATE OF CALIFORNIA

FILED MAY 9, 1946.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 103

THE GOSPEL ARMY, A CORPORATION,
APPELLANT,

vs.

THE CITY OF LOS ANGELES, BOARD OF SOCIAL SERVICE COMMISSIONERS, DEPARTMENT OF SOCIAL SERVICE, AND DAN O. HOYE, CITY CONTROLLER

APPEAL FROM THE SUPREME COURT OF THE STATE OF CALIFORNIA

INDEX

	Original	Print
Record from Superior Court of Los Angeles County	1	1
Amended complaint	1	1
Answer to amended complaint	6	4
Findings of fact and conclusions of law	13	8
Judgment	19	11
Notice of appeal	22	13
Praecipe for record	23	14
Reporter's transcript of hearing	28	15
Caption and appearances	28	15
Testimony of Clarence O. Patton	29	16
Ruth Colbert	44	26
Clarence O. Patton (recalled)	46	27
James A. Perigo	74	46
Ruth Colbert (recalled)	81	51
Defendant's motion for non-suit and denial thereof	98	62
Testimony of Ferris Miller	99	62
Reporter's certificate (omitted in printing)	123	
Stipulation as to transcript of hearing	124	77
Clerk's certificate	125	78

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., SEPT. 24, 1946.

—6732

	Original	Print
Proceedings in Supreme Court of California	126	78
Order transferring cause from District Court of Appeals	126	78
Opinion, Traynor, J.	127	79
Dissenting opinion, Carter, J.	156	98
Dissenting opinion, Edmonds, J.	200	124
Order denying rehearing	219	136
Material Register of Actions entries	220	136
Judgment	221	137
Petition for appeal	225	138
Assignments of error	226	138
Order allowing appeal	254	155
Citation and service (omitted in printing)	257	
Bond on appeal (omitted in printing)	260	
Order enlarging time to docket and file record	264	156
Affidavit of Robert H. Wallis	266	156
Praecipe for transcript of record	269	158
Clerk's certificate (omitted in printing)	272	
Statement of points to be relied upon and designation of parts of record to be printed	274	159
Appellees' designation of portions of record to be printed	290	167
Order postponing further consideration of the question of jurisdiction	295	168

[fol. 1] [File endorsement omitted]

IN SUPERIOR COURT OF LOS ANGELES COUNTY

No. 470368

THE GOSPEL ARMY, a Corporation, Plaintiff,

vs.

THE CITY OF LOS ANGELES, a Municipal Corporation, the Board of Social Service Commissioners, Department of Social Service, Dan O. Hoye, City Controller, Defendants

AMENDED COMPLAINT—Filed June 8, 1942

Plaintiff complains of the defendants and for cause of action alleges as follows, to-wit:

I

That at all times hereinafter mentioned the plaintiff was and now is a corporation organized and existing under and by virtue of the laws of the State of California and the District of Columbia, and prior to the filing of this amended complaint has been, and now is, engaged in religious activities in the County of Los Angeles, State of California.

II

That the City of Los Angeles is now, and was at all times herein mentioned, a municipal corporation, organized and existing under and by virtue of the laws of the State of California; that the Board of Social Service Commissioners and the Department of Social Service, are a branch and agency of the City of Los Angeles, having the control and enforcement of the ordinances of the City of Los Angeles pertaining to Charities; that Dan O. Hoye is the duly qualified and acting Controller of the City of Los Angeles, having under his control and a part of his duties the collection of [fol. 2] licenses and the enforcement of the ordinances of said City of Los Angeles pertaining thereto; that John Doe and Jane Doe are sued herein as fictitious defendants and their true names will be inserted herein when same have been ascertained.

III

That the plaintiff is a duly constituted and functioning religious organization, engaged exclusively in the promulgation, by literature and word of mouth, of its religious beliefs, by and through its auxiliaries, and in the procuring of donations in the form of money and articles of value in the prosecution and furtherances of its religious activities.

IV

That the said defendants have notified the plaintiff that it is subject to the rules, regulations and laws of the said defendants pertaining to charities and relief and that the said plaintiff organization is subject to the enforcement of said rules and regulations by the Board of Social Service Commissioners and the Department of Social Service, and that before said plaintiff organization can continue their religious activities in the City of Los Angeles they must first apply for and receive from the said Board of Social Service Commissioners and Department of Social Service a permit authorizing said plaintiff organization to continue their religious activities in said City of Los Angeles, the [fol. 3] said Board of Social Service Commissioners and Department of Social Service having full power, under the ordinances of said City of Los Angeles, to pass on and reject all applications coming before them; that the defendant Dan O. Hoye, the City Controller, of the City of Los Angeles, has notified and demanded of the plaintiff that it must pay to the City of Los Angeles, through his office, a license to operate the store of plaintiff, which store is being conducted by plaintiff for the sale and disposal of salvaged personal property donated and given to the said plaintiff by the general public, the proceeds derived therefrom is used by the plaintiff in the furtherance of said religious organization, and that said Dan O. Hoye and all of the other defendants contend and state that the plaintiff is violating the ordinances of the City of Los Angeles pertaining thereto and is subject to criminal prosecution, and the said defendants have and are threatening criminal prosecution of this plaintiff.

V

That if this plaintiff is required to obtain a permit and the payment of the license as a condition of their soliciting and receiving donations as aforesaid, to be used in the furth-

erance of said religious activities, will amount to a prior restraint on the exercise of their religious activities within the meaning of the Constitution of the United States, both as to the First and Fo-rteenth Amendment thereof, and is an infringement upon the free exercise of their religious [fol. 4] liberty as protected by the said constitution.

VI

That unless the said defendants are enjoined and restrained from doing the things hereinbefore mentioned the rights of the plaintiff to worship and carry on said religious activities their right to the free exercise of their religious liberty will be infringed and said plaintiff will suffer irreparable injury therefrom.

VII

That for all of the reasons aforesaid, there is no plain, speedy or adequate remedy at law for the redress of the aforesaid wrongs committed and threatened by the defendants.

Wherefore, plaintiff prays judgment that the defendants, and each of them, and any and all persons, associations, departments, under whom said defendants, or any of them, may be employed or acting, and any and all persons, associations or departments who may be acting, or claiming by, through or under said defendants, or any of them, be perpetually restrained and enjoined from the further interference, and threatened acts, which would in anyway prevent the free exercise of the religious liberty of the said plaintiff.

And for such other and different relief as shall appear just and equitable in the premises.

Robert H. Wallis, Attorney for Plaintiff.

[fol. 5] (Verification.)

(Endorsed) Received Jun. 8 '42 4:00, City Attorney, Los Angeles, Cal., by (Illegible).

[File endorsement omitted.]

[fol. 6] IN SUPERIOR COURT OF LOS ANGELES COUNTY

ANSWER TO AMENDED COMPLAINT—Filed November 17, 1942

Come now the defendants, The City of Los Angeles, the Board of Social Service Commissioners, the Department of Social Service, and Dan O. Hoye, City Controller, in the above entitled action, and answering plaintiff's amended complaint on file herein admit, deny and allege as follows:

I

Answering paragraph I thereof deny that plaintiff has been or now is engaged in religious activities.

II

Answering paragraph III thereof deny that plaintiff is a religious orgapization, engaged in the promulgation of religious beliefs or in the procuring of donations in the prosecution and futherance of its religious activities, and further deny that plaintiff has, or is capable of having, any religious belief.

III

Answering paragraph IV thereof admit that defendants have notified plaintiff that it is subject to the rules, regulations and laws of defendant City pertaining to charities and relief and in this connection allege that plaintiff is subject to the sections of the charter and the ordinances of the City of Los Angeles pertaining to charities and relief, being particularly sections 70 to 88 inclusive and [fol. 7] section 215 of the charter of the City of Los Angeles and sections 44.01 to 44.19 inclusive, of ordinance No. 77,000 as amended, which ordinance was enacted on September 30, 1936 and became effective on November 12, 1936 and was entitled, "An Ordinance enacting a revision and codification of the regulatory and penal ordinances of the City of Los Angeles, to be known as the Los Angeles Municipal Code, providing penalties for violation of the provisions thereof and repealing all ordinances and parts of ordinances in conflict therewith," and which ordinance in so far as the sections thereof in question are concerned, was amended by ordinance No. 80,920 which was enacted March 1, 1939 and became effective April 8, 1939, ordinance No. 81618 which was enacted September 15, 1939 and became

effective October 19, 1939, and ordinance No. 84,121 which was enacted February 5, 1941 and became effective March 14, 1941.

These defendants deny that they or any of them have notified plaintiff that before plaintiff can continue its religious activities in the City of Los Angeles it must first apply for and receive from the Board of Social Service Commissioners and the Department of Social Service a permit authorizing plaintiff to continue its religious activities in the City of Los Angeles.

These defendants further allege that before plaintiff can continue its activities in the City of Los Angeles it must first apply for and receive from said Board of Social [fol. 8] Service Commissioners and said Department of Social Service a permit authorizing plaintiff so to do; deny that plaintiff has carried on or is carrying on religious activities and deny that said charter and said ordinances empower said Board of Social Service Commissioners and said Department of Social Service arbitrarily to pass on and reject any applications of plaintiff to carry on religious activities and allege that said ordinances apply only to charitable activities; but said defendants do allege that before plaintiff, its officers or employees, may solicit any contributions for charitable purposes plaintiff must file with said Department of Social Service Commissioners a notice of intention to solicit charitable contributions, as provided in section 44.05 and 44.06 of said Municipal Code.

Said defendants further allege that they contend that under the provisions of sections 24.01 as amended by ordinance No. 79,314 which was enacted March 3, 1938 and became effective April 8, 1938, ordinance No. 83,898 which was enacted December 26, 1940 and became effective February 3, 1941, ordinance No. 83,743 which was enacted December 2, 1940 and became effective January 4, 1941, ordinance No. 84, 531 which was enacted April 4, 1941 and became effective May 9, 1941, ordinance No. 83,646 which was enacted November 15, 1940 and became effective December 26, 1940 and ordinance No. 82, 638 which was enacted [fol. 9] April 3, 1940 and became effective May 9, 1940, and 22.10 as amended by ordinance No. 79,315 which was enacted March 3, 1938 and became effective April 8, 1938, of said Municipal Code a permit must be secured from the Board of Police Commissioners of the City of Los Angeles

for the operation of the business which has been and now is being conducted in said City of Los Angeles, and said defendants further contend that a business license must be secured from said City of Los Angeles under sections 21.100 as amended by ordinance No. 77,297 which was enacted December 8, 1936 and became effective January 10, 1937, and 21.134 of said Municipal Code for the conducting of said business, and if said business is the one referred to in paragraph IV of plaintiff's said complaint then it is the contention of these defendants that plaintiff must secure said permits and licenses and in not doing so plaintiff is violating said ordinances and is subject to criminal prosecution therefor.

Said defendants deny generally and specifically each and every other allegation in said paragraph contained except those allegations herein specifically admitted.

IV

Answering paragraph V thereof deny that the requirements as to permit and license fees set out in paragraph III hereof will amount to a prior restraint on the exercise of religious activities within the meaning of the Constitution of the United States, and deny that such require-[fol. 10] ments are an infringement on the free exercise of religious liberty as guaranteed by said Constitution.

V

Answering paragraph VI thereof deny that unless defendants are enjoined and restrained from enforcing the provisions of the charter and ordinances of the City of Los Angeles, mentioned in paragraph III hereof, that the rights of plaintiff to worship and carry on its religious activities or plaintiff's right to the free exercise of religious liberty will be infringed and that plaintiff will suffer irreparable injury or any injury thereby.

VI

Answering paragraph VII thereof deny generally and specifically each and every allegation therein contained.

For a second separate and distinct answer and defense these answering defendants allege:

I

That the Board of Social Service Commissioners and the Department of Social Service of the City of Los Angeles have no existence separate from said City and are incapable of being sued.

Wherefore, these answering defendants pray that said action be forthwith dismissed as to defendants Board of Social Service Commissioners, Department of Social Service, and that defendant Dan O. Hoye, City Controller and defendant City of Los Angeles, have judgment for their [fol. 11] costs, and such other and further relief as may seem just and equitable.

Ray L. Chesebro, City Attorney, by Robert W. Anderson, Deputy City Attorney, Attorneys for Defendants.

AFFIDAVIT OF SERVICE BY MAIL

STATE OF CALIFORNIA,
County of Los Angeles, ss:

Mildred McPherson being first duly sworn, deposes and says:

That she is and was, at all times herein mentioned, a citizen of the United States and a resident of the County of Los Angeles, over the age of eighteen years and not a party to nor interested in the within action; That her business address is Room 459, City Hall, City of Los Angeles, County of Los Angeles, State of California;

That on the 17th day of November, 1942, she served the attached Answer to Amended Complaint upon the attorney for Plaintiff by depositing a copy thereof, inclosed in a sealed envelope with postage thereon fully prepaid, in the United States postoffice mail box at the City Hall addressed as follows: Robert H. Wallis, Esq., 328 American Avenue, Long Beach, California, and that the person on [fol. 12] whom said service was made has his office at a place where there is a delivery service by mail, and that there is a regular communication by mail between the place of mailing and the place so addressed.

MILDRED MCPHERSON.

Subscribed and sworn to before me this 17th day of November, 1942.

Stanley Matthews, Notary Public in and for the County of Los Angeles, State of California. (Seal)

[File endorsement omitted.]

[fol. 13] In Superior Court of Los Angeles County

Findings of Fact and Conclusions of Law—Filed June 28, 1943

The above entitled cause having duly and regularly come on for trial on the 10th and 11th days of March, 1943, in the above entitled Court, Department 37, before the undersigned Judge presiding, without a Jury, a Jury having been waived by the parties; the Plaintiff appearing by Robert H. Wallis, its attorney; the Defendants appearing by Wilbur Bassett, Deputy City Attorney, and evidence both oral and documentary having been duly introduced by the respective parties, and the Court having been fully advised in the premises, and the cause having been duly submitted to the Court for decision, the Court now makes its Findings of Fact and Conclusions of Law, to-wit:

Findings of Fact

I

It is true that the Plaintiff, the Gospel Army, was and now is a Corporation, organized and existing under and by virtue of the laws of the State of California and the District of Columbia, and has and now is engaged in religious activities in the County of Los Angeles, State of California.

II

It is true that the City of Los Angeles is now and was at all times herein mentioned a Municipal Corporation, organized and existing under and by virtue of the laws of the State of California; that the Board of Social Service [fol. 14] Commissioners and the Department of Social Service are a branch and agency of the City of Los Angeles, having the control and enforcement of the ordinances of said City of Los Angeles pertaining thereto.

III

It is true that the Plaintiff is a duly constituted and functioning religious organization, engaged exclusively in the promulgation, by literature and word of mouth, of its religious beliefs, by and through its auxiliaries, and in the procuring of donations in the form of money and articles of value in the prosecution and furtherance of its religious activities.

IV

It is true that the said Defendants have notified the Plaintiff that it is subject to the rules, regulations and laws of the said Defendants pertaining to charities and relief and that the said Plaintiff organization is subject to the enforcement of said rules and regulations by the Board of Social Service Commissioners and the Department of Social Service, and that before said Plaintiff organization can continue their religious activities in the City of Los Angeles they must first apply for and receive from the said Board of Social Service Commissioners and Department of Social Service a permit authorizing said Plaintiff organization to continue their religious activities in said city of Los Angeles, the said Board of Social Service Commissioners [fol. 15] and Department of Social Service having full power, under the ordinances of said City of Los Angeles, to pass on and reject all applications coming before them; that the Defendant, Dan O. Hoye, the City Controller, of the City of Los Angeles, has notified and demanded of the Plaintiff that it must pay to the City of Los Angeles, through his office, a license to operate the store of Plaintiff, which store is being conducted by Plaintiff for the sale and disposal of salvaged personal property donated and given to the said Plaintiff by the general public, the proceeds derived therefrom is used by the Plaintiff in the furtherance of said religious organization, and that said Dan O. Hoye and all of the other defendants contend and state that the Plaintiff is violating the ordinances of the City of Los Angeles pertaining thereto and is subject to criminal prosecution, and the said defendants have and are threatening criminal prosecution of this Plaintiff.

V

It is true that if this Plaintiff is required to obtain a permit and the payment of the license as a condition of

their soliciting and receiving donations as aforesaid, to be used in the furtherance of said religious activities, will amount to a prior restraint on the exercise of their religious activities within the meaning of the Constitution of the United States, both as to the First and Fourteenth Amendment- thereof, and is an infringement upon the free [fol. 16] exercise of their religious liberty as protected by the said constitution.

VI

It is true that unless the said Defendants are enjoined and restrained from doing the things hereinbefore mentioned the rights of the Plaintiff to worship and carry on said religious activities their right to the free exercise of their religious liberty will be infringed and said Plaintiff will suffer irreparable injury therefrom.

VII

It is true that for all of the reasons aforesaid, there is no plain, speedy or adequate remedy at law for the redress of the aforesaid wrongs committed and threatened by the Defendants.

And, from the foregoing facts, the Court, as Conclusions of Law, finds as follows:

CONCLUSIONS OF LAW

I

That a permanent injunction should issue herein restraining and enjoining the Defendants and each of them and any and all persons, associations, departments under whom said Defendants or any of them may be employed or acting and any and all persons, associations or departments who may be acting or claiming by, through or under said Defendants, or any of them from the further interference and threatened acts, which would in any way prevent [fol. 17] the free exercise of a religious liberty of said Plaintiff.

The Court hereby orders and directs that judgment be entered accordingly, with costs in favor of the Plaintiff and against the Defendants, to be taxed by the Clerk of this Court, and to be inserted in the judgment to be entered hereon.

Done in Open Court this 28 day of June, 1943.
Harold B. Jeffery, Judge of the Superior Court.

(Affidavit of Service by Mail—1013a, C. C. P.)

STATE OF CALIFORNIA,
County of Los Angeles, ss:

Robert H. Wallis, being first duly sworn, says: That affiant is a citizen of the United States and a resident of the County of Los Angeles; that affiant is over the age of eighteen years and is not a party to the within and above entitled action; that affiant's business/residence address is: 328 American Ave., Long Beach, Calif., that on the 24 day of April, 1943, affiant served the within Findings of Fact on the Defendants in said action, by placing a true copy thereof in an envelope addressed to the attorney of record for said Defendants at the residence/office address of said attorney, as follows: "Wilbur Bassett, Deputy City Attorney, City Hall, Los Angeles" and by then sealing said [fol. 18] envelope and depositing the same, with postage thereon fully prepaid, in the United States Post Office at Los Angeles, California, where is located the office of the attorney for the person by and for whom said service was made.

That there is delivery service by United States mail at the place so addressed or/and there is a regular communication by mail between the place of mailing and the place so addressed.

Robert H. Wallis.

Subscribed and sworn to before me this 24 day of April, 1943. I. A. Merrill, Notary Public in and for the County of Los Angeles, State of California. My Commissioner Expires No. 24, 1943. (Seal.)

[File endorsement omitted.]

[fol. 19] IN SUPERIOR COURT OF LOS ANGELES COUNTY

JUDGMENT—Filed June 28, 1943

The above entitled cause having duly and regularly come on for trial on the 10th and 11th days of March, 1943, in the

above entitled Court, Department 37, before the undersigned Judge presiding, without a Jury, a Jury having been waived by the parties; the Plaintiff appearing by Robert H. Wallis, its attorney; the Defendants appearing by Wilbur Bassett, Deputy City Attorney, and evidence both oral and documentary having been duly introduced by the respective parties, and the Court having been fully advised in the premises, and the Court having duly made and filed its Findings of Fact and Conclusions of Law, wherein it found that the Plaintiff is entitled to this Judgment, it is

Ordered, Adjudged and Decreed:

That the Defendants and each of them and any and all persons, associations, departments under whom said Defendants or any of them may be employed or acting and any and all persons, associations, or departments who may be acting or claiming by, through or under said Defendants or any of them are hereby permanently restrained and enjoined from the further interference and threatened acts, which would in any way prevent the free exercise of the religious liberty and freedom of worship of the said Plaintiff.

Plaintiff is entitled to its costs herein expended in the [fol. 20] sum of $25.25.

Done in Open Court the 28 day of June, 1943.

Harold B. Jeffery, Judge of the Superior Court.

(Affidavit of Service by Mail—1013a, C. C. P.)

STATE OF CALIFORNIA,
County of Los Angeles, ss:

Robert H. Wallis, being first duly sworn, says: That affiant is a citizen of the United States and a resident of the County of Los Angeles; that affiant is over the age of eighteen years and is not a party to the within and above entitled action; that affiants business/residence address is: 328 American Ave., Long Beach, Calif., that on the 24 day of April, 1943, affiant served the within Judgment on the Defendants in said action, by placing a true copy thereof in an envelope addressed to the attorney of record for said defendants at the residence/office address of said attorney, as follows: "Wilbur Bassett, Deputy City Atto-n-y., City Hall, Los Angeles, Calif." and by then sealing said envelope and depositing the same, with postage thereon fully prepaid,

in the United States Post Office at Los Angeles, California, where is located the office of the attorney for the person by and for whom said service was made.

That there is delivery service by United States mail at the [fol. 21] place so addressed or/and there is a regular communication by mail between the place of mailing and the place so addressed.

Robert H. Wallis.

Subscribed and sworn to before me this 24 day of April, 1943. I. A. Merrill, Notary Public in and for the County of Los Angeles, State of California. My Commission Expires Nov. 24, 1943. (Seal.)

[File endorsement omitted.]

[fol. 22] IN SUPERIOR COURT OF LOS ANGELES COUNTY

NOTICE OF APPEAL—Filed July 9, 1943

To the Plaintiff, the Gospel Army, a Corporation, and to the Clerk of the Above Entitled Court, and to All Other Persons Who May Be Interested:

You, And Each Of You, Will Please Take Notice that the City of Los Angeles, a Municipal Corporation, the Board of Social Service Commissioners, Department of Social Service, and Dan O. Hoye, City Controller, hereby appeal to the Supreme Court of the State of California from the judgment made in the above entitled action in favor of the plaintiff, The Gospel Army, a corporation, and against the said defendants, and entered on or about the 29th day of June, 1943, in Judgment Book 1346, page 174, of the records of the Superior Court of the County of Los Angeles, California, and from the whole of said judgment aforesaid.

Dated at Los Angeles, California, July 9, 1943.

Ray L. Chesebro, City Attorney, and Wilbur Bassett, Deputy City Attorney, Attorneys for Defendants.

[File endorsement omitted.]

[fol. 23] IN SUPERIOR COURT OF LOS ANGELES COUNTY

PRAECIPE FOR RECORD—Filed July 12, 1943

To the Clerk of the Superior Court of the County of Los Angeles, and to the Gospel Army, a Corporation, Plaintiff and Respondent:

You will please take notice that the defendants, The City of Los Angeles, a municipal corporation, The Board of Social Service Commissioners, Department of Social Service, and Dan O. Hoye, City Controller, desire to appeal and have appealed to the Supreme Court of the State of California from that certain judgment in favor of the plaintiff, The Gospel Army, a corporation, and against said defendants, entered by the Clerk of the above entitled court in Book 1346 of Judgments, at page 174 thereof, records of the Superior Court of the County of Los Angeles, California, on or about June 29, 1943.

Defendants hereby request the preparation of reporter's transcript of the testimony offered or taken, the evidence offered or received, and all rulings, acts or statements of the court, also all objections or exceptions of counsel and all matters to which the same relate.

You will further take notice that the appellants, the said defendants, herewith and hereby designate the papers [fol. 24] or records on file or lodged with the clerk which they desire incorporated in the record on appeal, to wit:

1. The judgment roll.
2. The notice of appeal.
3. The notice to prepare clerk's transcript and reporter's transcript.

Dated at Los Angeles, California, July 12, 1943.

Ray L. Chesebro, City Attorney, and Wilbur Bassett, Deputy City Attorney, Attorneys for Appellants.

AFFIDAVIT OF SERVICE BY MAIL

STATE OF CALIFORNIA,
County of Los Angeles, ss:

Maie Litton being first duly sworn, deposes and says:

That she is and was, at all times herein mentioned, a citizen of the United States and a resident of the County of

Los Angeles, over the age of eighteen years and not a party to nor interested in the within action; That her business address is 400 City Hall, City of Los Angeles, County of Los Angeles, State of California;

[fols. 24a-27] That on the 12th day of July 1943, she served the attached notice to Clerk—Appellants Designation of Paper and Records and Notice to Prepare Reporter's Transcript and Clerk's Transcript upon Robert H. Wallis Esq., by depositing a copy thereof, inclosed in a sealed envelope with postage thereon fully prepaid, in the United States postoffice mail box at Los Angeles, California, addressed as follows: Robert H. Wallis Esq., 328 American Avenue, Long Beach, California, and that the person on whom said servuce was made has his office at a place where there is a delivery service by mail, and that there is a regular communication by mail between the place of mailing and the place so addressed.

Maie Litton.

Subscribed and sworn to before me this 12th day of July 1943. Stanley Matthews, Notary Public in and for the county of Los Angeles, State of California. (Seal.)

[File endorsement omitted.]

[fol. 28] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES

Department 23, Hon. Harold B. Jeffery, Judge Presiding

No. 470,368

THE GOSPEL ARMY, a Corporation, Plaintiff,

vs.

THE CITY OF LOS ANGELES, a Municipal Corporation, the Board of Social Service Commissioners, Department of Social Service, Dan O. Hoye, City Controller, Defendants

Reporter's Transcript

APPEARANCES

For Plaintiff: Robert H. Wallis.

For Defendants: Ray L. Chesebro, City Attorney, by Wilbur Bassett, Deputy.

[fol. 29] Wednesday, March 10, 1943, 9:30 o'clock, A. M.

The Court: All right, you may proceed Mr. Wallis.
Mr. Wallis: Will you take the stand Mr. Patton.

CLARENCE O. PATTON, a witness called by and on behalf of the plaintiff, being first duly sworn, testified as follows:

By the Clerk:

Q. Will you state your name please?
A. Clarence O. Patton.

Direct examination.

By Mr. Wallis:

Q. Mr. Patton, where do you live?
A. 5849 South Broadway.
Q. Do you hold any official position with the Gospel Army?
A. Secretary and Treasurer.
Q. How long have you been Secretary?
A. Since 1930.

Mr. Bassett: The defendant objects to any further testimony given by witnesses or the introduction of testimony in this case on the ground that the complaint does not state a cause of action. On that we would like to be heard, if the Court please.

The Court: Yes, you will be heard, Mr. Bassett.

(Then follows colloquy and argument between Court and counsel.)

The Court: As I read it, it is true that the pleader is [fol. 30] assumed to plead his case in the most favorable manner to him and the pleading should be so construed. I am disposed, however, to overrule your objection, Mr. Bassett, despite the fact that there has been no allegation as to that unreasonableness. The other part that it is alleged that there is some restraint put upon the activities of this particular organization which is duly licensed and chartered—I should say, duly chartered as a corporation, may in itself be a sufficient pleading to the effect that any regulation which might be attempted upon it is unreasonable. For that reason I am going to overrule your objection and we will proceed with the case.

(Thereupon a recess was declared.)

Mr. Wallis: Call Mr. Patton.

CLARENCE O. PATTON, resumes the witness stand for further

Direct examination

By Mr. Wallis:

Q. How long have you been Secretary of this organization?

A. Since 1930.

Q. Have you devoted your entire time as Secretary with the organization?

A. Yes.

Q. What are your duties as Secretary of the Gospel Army, the plaintiff?

[fol. 31] A. Keeping an accurate account of the entire organization.

Q. Did you keep the books and records of the organization?

A. Yes, answered the correspondence, take care of finances.

Q. Has that been the general course of your duties since you were appointed Secretary?

A. Yes, oh no, General Mobley did part of it himself.

Q. You have no other duties other than what you have outlined?

A. No.

Q. Where does the Gospel Army maintain their headquarters?

A. 5849 South Broadway, Los Angeles, California.

Q. Do they have any other office besides that one in Los Angeles?

A. That is their national headquarters. There is no other office except the branch stores.

Q. You have a branch store, do you?

A. And Mission, the industrial department.

Q. What is the industrial department?

A. The industrial department, they collect anything useful to help the Gospel Army in its religious activities.

Q. You say, "useful," you have reference to personal

property, do you?

[fol. 32] A. They collect anything useful.

Mr. Bassett: I object to that as calling for an explanation from his own witness.

The Court: He may answer it. I think Mr. Patton, if you keep your hand down I can hear better.

By Mr. Wallis:

Q. You have reference to personal property, do you Mr. Patton?

A. Clothing, papers and such stuff, furniture.

Q. From whom do you—are these gathered?

A. From the public.

Q. Now, you say they have a Mission?

A. Yes.

Q. And where is the Mission located?

Mr. Bassett: Just a moment, I object to that. I don't want to interfere but the "Mission" has several meanings. They may have a mission and not have the Mission.

The Court: You mean something intrinsic. All right, I will sustain the objection.

By Mr. Wallis:

Q. What is the nature of this Mission, Mr. Patton?

Mr. Bassett: That is objected to on the same ground.

The Court: He may answer.

A. That is for church services.

By Mr. Wallis:

Q. And that is conducted is it and operated by the Gospel Mission?

A. It is.

[fol. 33] Q. Where is that located?

A. 6620 South Broadway.

Q. What religious services do they hold there?

A. Prayer meeting Thursday at 7:30 P. M. Sunday services are 3:00 P. M.

Q. And who has charge of that department of the Gospel Army?

A. Reverend James A. Perigo.

Mr. Bassett: I can't hear anything you say. If you keep your hand down maybe I can hear.

A. Perigo.

By Mr. Wallis:

Q. Who has charge of the industrial department?

A. Mrs. Ruth Colbert.

Q. Now, Mr. Patton, does the Gospel Army have any solicitors or representatives that go out in the field or out in the city of Los Angeles?

A. Yes, we have financial solicitors and also with the industrial department we have what is called salvage solicitors who collect newspapers, clothing and such stuff.

Q. And since you have been Secretary of the Gospel Army, has the Gospel Army always maintained the industrial department and the Mission where services are held and these solicitors?

A. There was times where we had no industrial department but most of the time during my services we have had [fol. 34] an industrial department.

Q. Now, these financial solicitors, how do they operate, from door to door or how?

Mr. Bassett: That is objected to upon the ground that it is hearsay.

The Court: Oh, he is the Secretary.

Mr. Bassett: I think, perhaps, I don't make it clear to the Court. The question is, "how do they operate." He may be the Secretary and not have the least idea except as hearsay as to how they operate. I have no objection to evidence from a person who knows of his own knowledge.

The Court: The objection is overruled at this time. He may answer.

A. Ask the question again please.

(The last question is read by the reporter.)

A. They operate from door to door, yes.

By Mr. Wallis:

Q. During your tenure of office as Secretary have you acted as a solicitor for the Gospel Army?

A. Yes.

Q. On more than one occasion.

A. Before Mr. Hubbard took charge I was a solicitor in connection with my office as Secretary. I earned my own way and contributed to the work of the Gospel Army.

Mr. Bassett: Have the witness take his hand down.

Mr. Wallis: He hasn't the hand in front of his mouth.

The Court: I think you will appreciate the fact Mr. Bas-
[fol. 35] sett may have some difficulty in hearing.

Mr. Wallis: Will you try to talk louder, Mr. Patton?

A. I am talking very loud, it seems to me I should be understood.

The Court: Mr. Patton, I am afraid you can't be the judge of that. Mr. Bassett, if he says he has difficulty in understanding, he is telling us the fact.

By Mr. Wallis:

Q. Try and raise your voice a little louder, Mr. Patton. After all we have to get all the facts in here. Now, Mr. Patton, since you have been Secretary of the Gospel Army, I will ask you if you have received any letters from any of the defendants which are either the Board of Social Service Commissioners, Department of Social Service, or the City Controller's office relative to the Gospel Army?

A. Yes, the Social Service.

Q. And have you talked with anybody in response to those letters in the Social Service and if so, to whom?

A. No, I had no occasion to handle that part of it. It was handled either by General Mobley or Mr. Hubbard.

Mr. Bassett: I move to strike out all the answer except the word "no."

The Court: Motion is granted.

By Mr. Wallis:

Q. Mr. Patton, did I understand you to say the store was located at 9206 South Broadway?

A. Yes.

[fol. 36] (Counsel for plaintiff hands counsel for defendants a pamphlet.)

Q. Mr. Patton, does the Gospel Army have any other activities other than what you have specified, operating the Mission and the salvage store and solicitors?

A. That is all.

Q. And in connection with the financial solicitors, what do they do with the money that they obtain, Mr. Patton?

Mr. Bassett: That is objected to as not the best evidence.

By Mr. Wallis:

Q. If he knows?

Mr. Bassett: He is not the Treasurer.

Mr. Wallis: Yes, he is.

The Court: The objection is overruled.

By Mr. Wallis:

Q. What becomes of the money turned in by these solicitors, Mr. Patton, and to whom is it turned in?

A. It is turned in to me as Secretary and Treasurer of the Gospel Army and it is used for the work of the Gospel Army to carry on its religious activities.

Mr. Bassett: I move to strike all except the first part of the answer, "it is turned in to me," on the ground first it is not responsive and second it is a conclusion of the witness.

The Court: Oh, that is denied.

By Mr. Wallis:

Q. And what are these religious activities that you men- [fol. 37] tioned, Mr. Patton, outline a few of these, will you?

A. Church services, missionary work.

Q. When you say, "missionary work," you have reference to the Mission, do you?

A. No, our solicitors minister the work as they go along wherever they have an opportunity and give out religious tracts. We also give New Testaments to men in the Armed Forces.

Q. How many New Testaments have been given to men in the Armed Forces, if you know?

A. About 300.

Q. Who has paid for those?

A. The Gospel Army.

Q. All right. Where else?

A. That is all at present.

Q. Well, during the time you have been in there what has been the custom of the Gospel Army with reference to

the dispersing of funds they received from these solicitors? Do you do any charitable work?

A. Outside of relief, yes.

Q. That is what I want.

A. We have given temporary aid, temporary aid to the needy, food, lodging and clothing and carfare.

Q. How about any clothing?

The Court: He said, "food, lodging and clothing."

[fol. 38] A. Yes.

By Mr. Wallis:

Q. And that has been the practice and custom of the Gospel Army since you have been Secretary and Treasurer?

A. It has, yes.

Q. Mr. Patton, were you ever connected with the Gospel Army prior to the time you became Secretary and Treasurer?

A. I started the 1st day of January, 1929, as financial solicitor.

Q. And you have personal knowledge do you that these activities which you have outlined have continued from that date down to the present time?

A. Yes, certainly.

Q. Now you said something about tracts and literature, are they furnished free to the public?

A. Those are given out free, yes.

Q. Who pays for the compilation of them?

A. It comes out of the Gospel Army funds.

Q. That is part of these funds that are received on those donations, is it?

A. Yes, it is.

Q. With reference to rent, do you have any rent to pay at your offices?

A. Yes, operating expense, rent and such as that, utilities comes out of the funds.

[fol. 39] Q. As a matter of fact you have devoted your entire time to the Gospel Army, haven't you, since 1929?

A. Yes.

Q. Not engaged in any other occupation or any other work?

A. No.

Q. Mr. Patton, does the Gospel Army have by-laws?

A. Yes.

Q. I hand you a little booklet here and ask you if you have ever seen that before, or one similar to it?

A. Yes, I have. That is the book of by-laws of the Gospel Army.

Mr. Wallis: I would like to have that marked for identification.

Mr. Bassett: I object to the question; and move to strike it.

The Court: It is just offered for identification.

Mr. Wallis: I haven't offered it in evidence.

Mr. Bassett: The objection is, it is not the best evidence even on the question, not to the offer.

Mr. Wallis: How do you know it is not the best evidence?

Mr. Bassett: I know it is not the best evidence, the by-laws you have shown to me, there is no certification there; it is not the original.

Mr. Wallis: I haven't offered it yet.

[fol. 40] The Court: The document has only been offered for identification.

Mr. Bassett: My objection went to the question and the answer.

The Court: It will be overruled. There is nothing prejudicial in this yet. It will be overruled.

Mr. Bassett: Is the objection to the answer expressly overruled?

The Court: Yes. I believe I said for the record it is overruled.

(The pamphlet containing the by-laws of the Gospel Army is marked Plaintiff's Exhibit 1 for Identification.)

By Mr. Wallis:

Q. What is the address of the national headquarters, Mr. Patton?

A. 5849 South Broadway.

Q. And has it always been there?

A. No.

Q. Prior to the location it now has, where was it located?

A. 6405 Bonsallo Avenue.

Q. Was that in Los Angeles?

A. Yes.

Q. Mr. Patton, I show you what has been marked Plaintiff's Exhibit 1 in this case and ask you if you have ever seen that document?

A. No, I don't remember seeing that.

[fol. 41] Q. Have you ever seen one similar to it?

Mr. Bassett: That is objected to as calling for a conclusion of the witness as to whether he has seen one similar to that.

The Court: He may answer.

By Mr. Wallis:

Q. Have you even seen one similar? Pick it up and examine it.

(The document is handed the witness.)

A. I don't understand this question, how do you mean?

Q. I ask you if you have ever seen a copy of this book that has been marked Exhibit 1?

Mr. Bassett: That is objected to, if it is a question of whether he has seen a copy.

Mr. Wallis: It is merely preliminary.

Mr. Bassett: He is asked if he has seen a copy of that book. In the first place it is a leading question. In the second place it asks for a conclusion of the witness on something neither before the witness or Court.

The Court: Overruled. You may answer.

A. I don't understand the question.

Mr. Wallis: I will reframe the question.

Q. Mr. Patton, you have the files and records under your control of the Gospel Army, do you not?

A. Yes.

Q. You have all the literature of the Gospel Army?

A. I do.

[fol. 42] Q. Did you or did you not hand me what has been marked Plaintiff's Exhibit 1 this morning before this case started?

Mr. Bassett: We object to that on the ground it has already been asked and answered. He has been asked if he knows what this is, he says, "no." Now counsel is trying to lead his own witness.

The Court: He may answer it.

A. The question is, did I hand you that?

Q. Yes. I withdraw that question and amend it. Mr. Patton, in the records and files of the Gospel Army do you have the by-laws of the Gospel Army and the constitution?

A. Yes.

Q. Have you got them with you?

A. The new by-laws that was for the Gospel Army hasn't been printed in book form yet and the only thing we have in that respect is a copy, a rough copy, of it, as it is to be printed.

Q. Well, what is this new one, you say, are they amending some of the by-laws?

A. It is a new constitution got up by Mr. L. D. Hubbard and approved of by the Ex-General.

Mr. Bassett: I move to strike that out as immaterial.

The Court: The motion is granted.

By Mr. Wallis:

Q. Do you or do you not have the by-laws of the Gospel Army, Mr. Patton?

[fol. 43] A. I do in the form I told you of.

Q. Did the Gospel Army have any by-laws when you were first elected Secretary?

Mr. Bassett: That is objected to as immaterial.

Mr. Wallis: It is preliminary.

The Court: He may answer.

(Then followed a short colloquy between Court and Counsel as to the number of objections made by Mr. Bassett.)

A. I understand so, to that effect, but I didn't see any book of rules and by-laws.

By Mr. Wallis:

Q. Have you ever seen any Mr. Patton?

Mr. Bassett: That is objected to as asked and answered.

Mr. Wallis: My question was when he first went there.

The Court: The answer, that he understood so, Mr. Wallis. I expected a motion to strike and I can understand probably why it wasn't made at that time. What is the question to which the objection is made now?

(The last question is read by the reporter.)

The Court: You may answer that.

A. No, I have not.

Mr. Wallis: If the Court please, I wonder if I can withdraw Mr. Patton. I want to introduce this before we proceed.

The Court: Just for the purpose of introducing that?

Mr. Wallis: Yes.

The Court: All right.

[fol. 44] Mr. Wallis: Step down, Mr. Patton.

Ruth Colbert, a witness called by and on behalf of the plaintiff, being first duly sworn, testified as follows:

By the Clerk:

Q. State your name, please?

A. Ruth Colbert.

Direct examination.

By Mr. Wallis:

Q. Mrs. Colbert, where do you live?

A. 117 West 90th Street.

Q. What is your business or occupation?

A. My occupation is running the salvage store for the Gospel Army.

Q. How long have you operated it?

A. It will be 6 years in November.

Q. How long have you been associated with the Gospel Army?

A. 6 years in June.

Q. During that time Mrs. Colbert, have you been actively engaged in the Gospel Army?

A. Yes, I have.

Q. And you haven't done any other work except in connection with operating the store?

A. No.

Q. Have you any other duties?

A. I take care of the industrial bookkeeping.

[fol. 45] Q. I will ask you Mrs. Colbert to examine Plaintiff's Exhibit 1 which has been marked for identification in this case, and state whether you have even seen that?

A. Yes, I have.

Q. Where did you see it?

A. It was presented to me when I entered the Gospel Army by our former General.

Q. That one or one similar?

A. One similar.

Q. During your connection have these been distributed?

A. Yes, to every officer or member.

Q. To your knowledge?

A. To my knowledge.

Q. I will ask you to examine this carefully, especially the by-laws here and state whether or not you ever saw the original by-laws and if so—where it mentions the words "by-laws"—have you ever seen the original by-laws?

A. No I have never seen it. I have only seen it in the book.

Q. That was the book that was given to all the——?

A. Yes, sir.

Mr. Wallis: We offer this your Honor.

Mr. Bassett: I would like to know the purpose.

Mr. Wallis: For any purpose.

Mr. Bassett: It hasn't any purpose from our point of [fol. 46] view.

The Court: You are objecting to its admission?

Mr. Bassett: Yes, sir.

The Court: The objection is sustained. We will recess now until 2:00 o'clock. All witnesses are to return at that time.

Wednesday, March 10, 1943.
2:00 O'Clock, P. M.

Clarence O. Patton, resumes the witness stand for further

Direct examination.

By Mr. Wallis: You may take the witness.

Cross-examination.

By Mr. Bassett:

Q. Mr. Patton, what were you doing—engaged in—before you were connected with the Gospel Army?

A. Railroad work.

Q. In what capacity?

A. Telegraph operator and agent.

Q. What railroad?

A. Several.

Q. The last one?

A. M. and St. L.

A. What does that mean, Missouri and St. Louis?

A. Yes.

[fol. 47] Q. Now, have you the corporate books of the plaintiff corporation in your possession?

A. Yes, but not with me.

Q. What do they provide—withdraw that. When you first worked for plaintiff you were soliciting money, were you?

A. Yes, collecting finances.

Q. Yes. And were you at that time paid a salary?

A. No.

Q. Upon what arrangement then did you handle this money? Did you turn all of it into the corporation?

A. Percent.

Q. A percentage; what percentage did you pay to the corporation?

A. 70 percent.

Q. Now, since you have been an officer of the corporation, have you had the books of account?

A. Yes.

Q. And what proportion of the funds brought and delivered to the corporation were on an average used for expenses or on salaries?

Mr. Wallis: We object to that if the Court please, unless it is limited to some particular time and some period.

Mr. Bassett: I have asked him on an average if he knows.

The Court: You are referring to the time since he has [fol. 48] had charge of the books?

Mr. Bassett: Yes, sir, if he knows.

Mr. Wallis: If he knows.

The Court: You may answer that, Mr. Patton.

A. I can't very well strike an average without consulting the books.

By Mr. Bassett:

Q. Very well, referring now to—is there any year for which you can state what proportion of funds received were employed in salaries and expenses?

The Court: Mr. Bassett, for my information, let's make this clear whether you mean the net which came after the collector had taken his or the gross before there was any collector's commission, assuming they call it that.

Mr. Bassett: The understanding was that the words, "received by the corporation" meant received from the solicitors, the net amount, yes, sir.

The Court: All right, Mr. Bassett.

By Mr. Bassett:

Q. Now, the question again, you gave what proportion as to any year?

Mr. Wallis: I am going to object to this on the ground first it is not proper cross examination, it does not tend to prove any issue in this case. If they took 90 percent, what would it prove in this case?

The Court: I think it is material, Mr. Wallis.

A. I would say around 50 percent.

By Mr. Bassett:

[fol. 49] Q. Can you bring the books of account into Court?

A. I can, yes.

Q. Now, when your solicitors are sent out are they given any written identification?

A. They are given a solicitor's certificate.

Q. And who issues that?

A. Issued by the General.

Q. What do you mean by the "General"?

A. The President of the Army.

Q. So you call the President the General?

A. Yes.

Q. And are those delivered—are those in your hands to give to the solicitors or do they get them direct from the General?

A. I have authority to issue them with the consent of the General.

Mr. Bassett: Well, I move to strike that answer as a conclusion of the witness.

The Court: That may remain in the record. It is denied.

By Mr. Bassett:

Q. Are those permits when issued, when signed by the General, issued to you in blank?

A. Yes.

Q. Then you determine who is to have the authority to collect and to whom to give these authorizations, is that so?

[fol. 50] A. Not without permission of the president.

Q. Well, now, let's suppose that you receive a certain executed authorization, do you receive at the same time the name of the person to whom it is to be given?

A. Certainly.

Q. Is that written upon the face of the permit?

A. No, I insert that myself unless—either I or the president can make those certificates, but he generally leaves that to me and it is necessary for me to fill out completely with his signature.

Q. Do you notify him before you issue the certificate?

A. Certainly.

Q. And you wait then until you get an answer from him, do you?

A. I must. That is not, not when he is absent, out of town. When he is absent, of course, it falls to me as secretary to take charge and in issuing cards it would be my discretion.

Mr. Bassett: I move to strike out that answer as a conclusion of the witness and not responsive.

The Court: The motion is denied.

By Mr. Bassett:

Q. Where does the General live?

A. The General at present or the Ex-General?

Q. No, the president, where does he live?

A. Well, he is in the Army and his wife is in charge now.

[fol. 51] Q. What Army?

A. The Armed Forces of the United States.

Q. Then where did he live before that?

A. He lived here in Los Angeles.

Q. In the city?

A. Yes.

Q. I ask you if you have seen this paper before?

A. Similar to that, yes.

Q. No, I am asking you if you have seen that paper before?

A. That one there?

Q. Yes.

A. I don't remember of seeing that particular——

Q. Can you say whether you ever saw it before or not?

A. No, I cannot.

Q. Then when you issue, as you say in the absence of the president, or as you say upon the——

A. I can tell you one thing.

Q. Just a minute. Tell me when I get through with my question. (Continuing) or after you have had instruction to, when you issue the permit do you make any entry upon it to show that you issued it?

A. Yes.

Q. Is there any entry on that to show that you issued it?

A. There is not.

[fol. 52] Q. Now, calling your attention to the same paper, is that the signature, William E. Mobley, of the person to whom you have referred as the President or General?

A. William E. Mobley, he was the Ex-General.

Mr. Bassett: We offer this in evidence, paper headed "The Gospel Army" and appearing to have a name of one "Captain R. Davis" and ask that it be admitted in evidence.

Mr. Wallis: Is that the first one you showed to me?

Mr. Bassett: Yes.

Mr. Wallis: We have no objection, your Honor.

The Court: All right, Defendants' Exhibit "A".

By Mr. Bassett:

Q. We show you another Gospel Army card bearing the name of Herbert Budd and ask you if you ever saw that before? If you know? Do you know Herbert E. Budd?

A. I do not.

Q. Is that the signature of the same person to whom I referred in the last exhibit?

A. It is.

Mr. Bassett: We now offer this in evidence.

Mr. Wallis: No objection.

The Court: Defendants' "B".

By Mr. Bassett:

Q. Now, referring to Defendants' Exhibit "B" I will ask you when that was issued?

Mr. Wallis: We object, if the Court please, he already said he had never seen it before.

The Court: Objection sustained. He said he never saw [fol. 53] it before.

By Mr. Bassett:

Q. Nevertheless, he is the Secretary and he may be able to discover from an examination of it when it was issued.

The Court: If you can determine when it was issued you may answer.

A. No, I do not know when it was issued and from looking at it I could not make any guess.

By Mr. Bassett:

Q. Do you keep a list of the authorized solicitors?

A. I do.

Q. Does the name of Captain Davis appear on that list?

A. It does not.

Q. Does the name of Herbert E. Budd appear on that list?

A. No, not unless it is in the old records, but the old records I can't recall what name is on there unless I examine them and they are not here to examine.

Q. You never heard the names of either of these persons before, did you?

A. I do not remeber of hearing such names.

Q. Did you say that you have or have not a list of solicitors?

A. We keep a record of the solicitors, yes.

Q. Do you have that record?

A. We have that at the office—headquarters.

[fol. 54.] Q. Does that list show when their authority expires?

A. It does

Q. Can you explain then why in Defendants' Exhibits "A" and "B" there is no expiration date appearing on either of them?

Mr. Wallis: We object to that, if the Court please, it is not proper cross examination, also it is argumentative.

The witness has testified he has never seen that exhibit before.

Mr. Bassett: That is not the point of the question at all.

The Court: He may answer it. Will you read it please?

(The last question is read by the reporter.)

A. I would consider it a false card because the Ex-General Mobley, he always put a date on the cards he issued.

By Mr. Bassett:

Q. Who put Herbert——

A. He always put a date on the cards.

Q. I see, but you said these were his signatures, that you recognized them, didn't you?

A. They look like his signatures, yes, I would take them for his signatures.

Q. Will you explain what you mean by a "false card"?

A. I can explain how—well, in the office he generally has a few cards on the desk with his signature already on them in case somebody would come in to solicit, that would save [fol. 55] him writing his name at that time.

Q. At the time he was acting, were you then Secretary?

A. I was.

Q. At that time after he signed a card, did it come to you for issuance or not?

A. No, I didn't issue every card that was supposed to be issued. I told you the General either issued them or I had authority.

Q. If he issued a card, you would not know of it?

A. Not always.

Q. Would you ever?

A. Yes.

Q. How would you find out?

A. By him acquainting me with the fact.

Q. How?

A. By telling me.

Q. And you didn't have any written record from him of these solicitors, did you?

A. He always keeps a record of his solicitors, yes.

Q. That is not the question. I move to strike the answer.

The Court: Strike the answer.

Mr. Bassett: Read him the question.

(The last question is read by the reporter.)

Mr. Wallis: What solicitors do you have reference to, all of them or these two?

[fol. 56] Mr. Bassett: All of the solicitors.

A. We have a record of the solicitors in the Gospel Army, yes.

By Mr. Bassett:

Q. I asked you if you personally had any written record from Mobley during the time that he was acting showing who were solicitors?

A. We have a record of all of the solicitors, yes.

Q. Can't you answer the question as framed, whether you had a record in writing from Mobley at the time that he was the president?

Mr. Wallis: I don't think the question is clear, your Honor. I think he ought to reframe his question.

Mr. Bassett: It is clear if the witness understands it.

The Witness: I don't understand it.

Mr. Bassett: I will withdraw it if he doesn't understand it.

Q. At the time that Mobley was acting as president and issued as you say cards to solicitors, did he then give you in writing any records of the cards which had been issued to solicitors?

A. No, no record in writing.

Q. You say that you had a list of the expiration dates, where did you get that?

Mr. Wallis: If the Court please, now, I am going to make an objection here. As the witness advised this morning, this organization was incorporated in 1905, are you dating [fol. 57] from that date on, or the present solicitors?

Mr. Bassett: I am talking about a specific time during which he was Secretary and Mobley was General or President.

Mr. Wallis: That is covering a large period.

By Mr. Bassett:

Q. How many years was that that Mobley was President and you were Secretary?

A. Well, it is going on 15 years since I first joined up with the Gospel Army.

Q. That isn't the question. The question is, during how many years were you Secretary while he was President?

A. Since 1930.

Q. Is he still President?

A. Who, Mobley, General Mobley?

Q. Yes.

A. No.

Q. Then it is not since 1930. Will you explain when he ceased to be President?

A. March 7, 1942, he died.

Q. Then the period is from '30 to '42. Now during that period when solicitors came to you with money you received the money, didn't you from solicitors?

A. Not always, very seldom.

Q. You were Treasurer, weren't you?

Mr. Wallis: Answer that yes or no.

A. Yes.

By Mr. Bassett:

[fol. 58] Q. Then, who else besides you received money for the corporation when it was brought in by solicitors?

A. General Mobley received it most of the time.

Q. What way had you as Treasurer then of knowing what moneys were being received from solicitors?

A. In receiving money from the solicitors we always gave them a receipt for the amount they turned in and when I came to the office to make up my report and bank the funds I had the receipt book to go by to determine the amount of cash that should be on hand.

Q. The receipt that was given to the solicitor?

Mr. Wallis: He said receipt book.

Mr. Bassett: Did he?

The Court: He said receipt book, Mr. Bassett.

By Mr. Bassett:

Q. Who is L. D. Hubbard in relation to the organization?

A. He was put in as President when General Mobley passed away.

Q. I show you two pages, one on the letterhead of the Gospel Army and ask you if you recognize—if you have seen these before?

A. Yes.

Q. And is that the signature of L. D. Hubbard, would you know?

A. That is not his personal signature.

[fol. 59] Q. It is a rubber stamp, is it?

A. No, it is by me.

Q. You wrote it, yes. Now——

Mr. Wallis: If you want to identify it I will consent it may be offered in evidence, the whole thing.

Mr. Bassett: Thank you.

Q. What was done with this after you had signed Hubbard's name to it?

A. It was given to solicitors.

Mr. Bassett: Now we offer it in evidence.

The Court: Defendants' "C" is a file consisting of two documents. This is a part of a letter, isn't it?

Mr. Bassett: Yes.

The Court: I see.

By Mr. Bassett:

Q. What do you understand by "religious liberty"?

Mr. Wallis: We object to that, if the Court please, asking for a conclusion of the witness.

The Court: Let's see what he alleges.

Mr. Bassett: It is alleged in the complaint and he swore to the complaint.

The Court: Oh, yes, "exercise of religious liberty". Yes, you may answer that Mr. Patton.

A. Religious liberty is free exercises of one's belief in the gospel.

By Mr. Bassett:

Q. And do you think—then did you think that the require-[fol. 60] ment of the ordinance that you—that application be made by the plaintiff to the city of Los Angeles under the ordinance for a license is an interference with religious liberty?

A. Yes.

Q. In what respect is that an interference with religious liberty?

A. You would not be free.

Q. Free to do what?

A. Exercise our liberty.

Q. What is the liberty that is impaired?

A. Our free right to work. We are required to pay for working. It certainly isn't free.

Q. Then you would say that if a man was compelled by law to pay dues to his union that he was not a free man?

Mr. Wallis: We object to that, if the Court please, as calling for a conclusion of the witness and argumentative.

The Court: Sustained.

By Mr. Bassett:

Q. If you were not permitted by ordinance to cross a crossing against the traffic signal, would you consider that was an interference with your liberty?

Mr. Wallis: We object to that. It is not proper cross-examination. It is argumentative and not within the issues in this case.

[fol. 61] The Court: Sustained.

Mr. Bassett: May I suggest in all humility here is a case where this witness over my objection has been allowed to testify that they were engaged in religious work and in religious activities. I objected at the time to it. Your Honor thought he should allow it. I should be allowed to find out what he knows about liberty and he who verified the complaint, what it means.

The Court: He has stated his opinion relative to religious liberty and we may go into that but to draw a comparison between religious liberty and a street crossing and so forth is improper. The objection is well taken, Mr. Bassett.

Mr. Bassett: This is cross-examination.

The Court: I appreciate that but I still sustain the objection.

By Mr. Bassett:

Q. Now, do you consider that the requirement that you pay a tax upon gasoline and a tax upon sales in California interferes with your liberty?

Mr. Wallis: I object to that as calling for a conclusion.

The Court: I believe this line of questioning is objectionable, Mr. Bassett, and sustain the objection.

By Mr. Bassett:

Q. You say that you consider the requirement that you apply to the city of Los Angeles for a permit an abridgment of your liberty, will you state in what respect your liberty [fol. 62] is abridged?

The Court: That is religious liberty.

Mr. Bassett: No he says—I got him away from that. He now says that what he means by liberty, by religious liberty, is the liberty to live the way he wants.

The Court: He said the free right to work, if that is what you are referring to, Mr. Bassett.

Mr. Bassett: Yes, sir.

The Court: However, this answer is in the record now.

Mr. Bassett: Which, that he meant the liberty to work?

The Court: As amended it may be answered.

Mr. Wallis: The Court should take judicial notice we are talking about religious liberty, not anything else.

The Court: This answer makes the question permissible.

Mr. Wallis: Very well, your Honor.

The Witness: Will you state the question again?

(The last question is read by the reporter.)

A. By the necessity of obtaining a permit.

By Mr. Bassett:

Q. Now, during the years that you had been connected with this association was any application made for a permit, any application to the city of Los Angeles made by the plaintiff?

A. Not that I am aware of.

Q. Then the city, nor any instrumentality or commission or bureau thereof has never refused any permit has it, or application?

[fol. 63] Mr. Wallis: If he knows.

A. Not to my knowledge.

By Mr. Bassett:

Q. Now, do these solicitors that go from door to door have any uniform—I notice you wear a uniform hat—do you allow the solicitors to wear a hat too?

A. We are all supposed to wear a uniform, yes and cap, as you see mine there.

Mr. Bassett: That is not what we are asking. The reporter will read it.

(The last question is read by the reporter.)

(No answer.)

By Mr. Bassett:

Q. Did they have anything with them for sale?

A. No.

Q. Where does the outfit get its—gets the goods that are at this salesroom?

Mr. Wallis: We object to the word "outfit."

Mr. Bassett: I will withdraw that.

Mr. Wallis: It is a religious corporation to these people whatever it may be to you but it is to them.

Mr. Bassett: Will you read it?

The Court: Have you substituted any word for "outfit."

Mr. Bassett: The organization. That has not even been proved yet but I assume that it is an organization. Where does the organization get the goods that it sells in its [fol. 64] salvage store?

A. They are donated by the public and collected by the solicitors of the industrial department.

Q. And what payment is made to solicitors for material brought in?

A. I would have to refer that to the industrial department for an answer.

Q. As Secretary and Treasurer, don't you know?

(The witness does not answer.)

Mr. Wallis: We object to the question. It is argumentative. He has already said he would have to refer that to the industrial department for an answer.

The Court: The objection is overruled.

Mr. Wallis: Have you answered that, Mr. Patton?

A. No, I didn't answer it.

By Mr. Bassett:

Q. Did you understand the question?

(The witness does not answer.)

Q. Mr. Patton, did you understand the question?

A. No, I don't understand it.

Mr. Bassett: All right, the reporter will read it.

(The last question is read by the reporter.)

The Court: That is what is paid to industrial solicitors.

A. I would have to refer to the record before I would care to answer such a question.

By Mr. Bassett:

Q. Does your record as Treasurer show?

[fol. 65] A. I have a complete account.

Q. Does your record as Treasurer show what money was paid to solicitors for solicited material brought in?

A. It does.

Q. Are solicitors—do they receive anything?

Mr. Wallis: If the Court please——

The Court: The objection is sustained.

Mr. Bassett: I think it is almost incredible a man Secretary and Treasurer so many years doesn't know.

Mr. Wallis: He has said they have a head of the industrial department.

The Court: It is your observation, Mr. Bassett, you may ask any questions that are permissible, Mr. Bassett.

By Mr. Bassett:

Q. Was there any maximum or minimum as to the reward of solicitors?

The Court: You mean industrial solicitors?

Mr. Bassett: No, sir, they are all one. There is no showing there is two separate solicitors.

The Court: He has referred to industrial solicitors and solicitors.

Mr. Bassett: I didn't understand that.

Q. Are there two classes of solicitors, Mr. Patton?

A. Yes.

Q. Do you have two classes of permits?

A. What do you mean by "permits"?

Q. I mean authorization such as shown in Exhibits "A" [fol. 66] and "B".

A. They all bear the same kind of a solicitation certificate.

Q. Then how do you determine whether a man is an industrial solicitor or a money solicitor?

A. Industrial solicitors are handled by the industrial department and the financial solicitors are handled by headquarters.

Mr. Bassett: I move to strike it out as not responsive.

The Court: Denied, Mr. Bassett.

By Mr. Bassett:

Q. Then, so far as the face of the permit is concerned you have only one class of authorization for solicitors, isn't that so?

A. Yes.

Q. Isn't it a fact that if a financial solicitor failed to get any money that he might—so far as your knowledge of their procedure is concerned—accept personal property if offered?

A. If he did it would be at his own risk and unbeknown to us.

Q. What punishment or responsibility would you attach to such an act?

Mr. Wallis: We object, if the Court please, as something not in evidence, not proper cross-examination.

The Court: Overruled. Perhaps the witness is confused.

[fol. 67] By the Court:

Q. Have you ever known of a financial solicitor taking—when I say "taking" I mean accepting personal property of any kind from anyone for the organization?

A. I don't recall any at present.

By Mr. Bassett:

Q. Is a report made to you as Treasurer or as Secretary from the industrial department showing the goods received and solicitors from whom they are received?

A. By that do you mean a list of the articles received at the industrial department?

Q. A list of the solicitors with the amount credited to them or charged against the organization.

A. In what way?

Q. Money ways.

A. Money collected by the solicitors of the industrial department?

Q. No, I want to know if your records show if John Jones collected certain property and delivered it to the industrial department whether your record shows any credit to him for that work?

A. You mean what they bring in to the industrial department, a list of the articles?

Q. Is that the way he is paid, after they are sold?

A. I don't understand just what you are after.

Q. I am asking you if the solicitor is paid for gathering [fol. 68] whatever he gathers except money at the time that he delivers it to the industrial department, or is he credited on the books, or does he have to wait until it is disposed of?

A. Each truck is in charge of a truck driver who has charge of the operations of that truck and the collectors are under his charge.

Q. The truck drivers appoint those collectors?

A. They are hired by their—hired by the industrial department.

Q. What is that?

A. But the truck driver I think, if I am not mistaken, has authority to get men of his own free will to go out with him on the truck to collect the salvage.

Q. Does he pay them?

A. Yes.

Q. Now as to the truck driver, is he paid a salary or part of the loot or returns?

A. Part of the returns.

Q. What part?

A. That—I object to answer, I don't see as it——

Mr. Bassett: The Court will tell you what to answer.

The Witness: Well, what does the Court say?

The Court: Mr. Patton, you will answer everything unless your attorney objects to it and I sustain the objection or I tell counsel that the question will not be permitted to be

[fol. 69] answered, so until you hear something of that kind you just answer the question.

A. I can't definitely answer it at the present.

By Mr. Bassett:

Q. What do you mean at the present?

A. I mean that I must consult my record before I would give you an answer. Is that clear enough?

Q. I will tell you if it is not clear. Has that amount that has been set been changed from time to time or has it been the same for a long time?

Mr. Wallis: We object to that. He already said he couldn't give any information without his records.

The Court: If you can answer it.

Mr. Bassett: If you can't, say so.

A. I can't.

Q. Is the answer I don't know?

(The witness does not answer.)

Q. When you get a return, financial return, from the industrial department, is that a net return of the amount returned to you as Treasurer or does it set out the expenses and maintenance and costs in detail?

A. It is a complete record of the transaction of the industrial department.

Q. Well, I guess I will have to repeat it.

(The last question is read by the reporter.)

Q. (Continuing.) And reference to that record would show the amount paid or allowed to truck drivers, would it?

[fol. 70] A. Yes.

Q. Now, when you were asked about religious exercise, and so on, you said that there was a mission, where is that?

A. 6620 South Broadway.

Q. And who conducts the service there, if any?

A. Reverend James A. Perigo.

Q. Is he an ordained minister?

A. Yes.

Q. Of what church?

A. The Gospel Army.

Q. Oh. Then he has no ordainment except from whom, the General of the Army?

A. Yes.

Q. Does the Gospel Army maintain any seminary for the education of its ministers?

Mr. Wallis: We object to that, if the Court please, I don't think it is required.

The Court: It may not be essential. The question may be error. However, it may be answered.

Mr. Wallis: The Court knows any church, if properly organized, has the right to ordain ministers.

The Court: Your statement is correct, Mr. Wallis.

By Mr. Bassett:

Q. Answer the question.

Mr. Wallis: Object to it.

Mr. Bassett: The Court has already ruled on it.

The Court: You may answer that question.

[fol. 71] Mr. Wallis: Pardon me.

The Court: Yes, I had, Mr. Wallis. You may answer the question.

A. No.

The Court: You are going to go on for sometime?

Mr. Bassett: Not like the brook, but for a short time.

The Court: We will call the afternoon recess at this time.

(Recess.)

By Mr. Bassett:

Q. Mr. Patton, has there been any interference by the city with the services at your Mission?

A. Not that I know of.

Mr. Bassett: I think that is all.

Redirect examination.

By Mr. Wallis:

Q. Mr. Patton did you have any knowledge of any cards being given to any investigator of the Police Commissioner or the Social Service?

A. There was one card given to a man, I don't remember the name, but I heard afterwards he was an investigator.

Mr. Bassett: Just a moment. I object to anything he heard afterwards. It is hearsay.

Mr. Wallis: Unless he heard it from the Police Commissioner.

[fol. 72] Mr. Bassett: No, I don't care.

The Court: It would make a difference. You will have to lay a foundation. I will sustain the objection. "I don't remember the name", from there on, strike it.

By Mr. Wallis:

Q. Do you know if Mr. Budd is an investigator for the Police Commissioner?

A. No, I don't know.

Q. Of your own knowledge, not what you heard?

A. I heard.

Mr. Bassett: Just a moment.

The Court: Not what you heard, just what you know.

By Mr. Wallis:

Q. Mr. Patton, showing you Exhibits "A" and "B", which are two cards offered by the defendants, are you still using that type of card?

Mr. Bassett: I object to that as immaterial.

The Court: You may answer.

A. No.

By Mr. Wallis:

Q. When did you discontinue using that type of card?

A. It has been several years ago, 3 or 4, something like that.

Q [illegible]out 3 or 4 years?

A [illegible]s near as I remember, yes.

Q. Mr. Patton, do you know of your own knowledge whether any of these cards have been sent to the Social Service?

[fol. 73] A. We send a blank card once a year to the Social Service with our report.

Q. With your report?

A. Yes to show the kind of certificate that was issued to the solicitors.

Q. I show you a red card here, Mr. Patton, and ask you if you have ever seen that card?

A. Yes.

Q. And is that printed by the Gospel Army?

A. Yes.

Q. Is that the type of card that they issue?

A. Yes.

Q. When did you start using that type of card?

A. I can't say definitely it has been a couple of years or so.

Q. A couple of years?

Mr. Wallis: I want to offer it in evidence.

The Court: Is that for identification?

Mr. Wallis: I want to offer it in evidence now.

Mr. Bassett: Well we have no objection if it is offered for identification, but for evidence we object on the ground there is no foundation laid.

The Court: Didn't he make the statement that—has been used for a couple of years?

Mr. Wallis: Yes, your Honor.

The Court: What is the lack of foundation there, Mr. [fol. 74] Bassett?

Mr. Bassett: Well, it doesn't tend to show that such a card was ever issued to anybody or if it was that it has any importance in this proceeding.

The Court: The objection is overruled. It is admitted as the Plaintiff's Exhibit 2.

Mr. Wallis: You may step down, Mr. Patton. Recall Mrs. Colbert.

The Court: You had no more questions after the introduction of those?

Mr. Bassett: No, thank you.

Mr. Wallis: I think I will call Reverend Perigo.

James A. Perigo, a witness called by and on behalf of the plaintiff, being first duly sworn, testified as follows:

By the Clerk:

Q. State your name, please?

A. James A. Perigo.

Direct examination.

By Mr. Wallis:

Q. Where do you live Mr. Perigo?

A. 6609 Denver Ave.

Q. And what is your connection with the Gospel Army, if any?

A. I am the minister of the Mission there, 6620 South Broadway.

Q. How long have you been a minister of the Gospel Army?

[fol. 75] A. Well, I haven't got no definite date but its been about 6 or 7 months, I believe.

Q. 6 or 7 months and did you receive any evidence of your appointment or ordination as a minister from the Gospel Army?

A. Yes, I have been ordained with them in their organization.

Q. You have. Now, state what your duties or your activities are in connection with the Gospel Army, Mr. Perigo?

A. To visit the sick and visit and pray with people. That is my duty regardless of denomination.

Q. Do you hold any services?

A. Yes, sir.

Q. When?

A. Sunday afternoon 3:00 P. M., Thursday evening 7:30.

Q. Do you have a permanent headquarters where people can contact you?

A. They would have to get me through the headquarters of the Gospel Army.

Q. Do you devote your entire time to the Gospel Army?

A. No, I preach in other denominations wherever I may be called.

Q. Now, under your supervision is there any financial help given to the needy?

A. Well, it—s through the headquarters.

[fol. 76] Q. Is it upon your recommendation or do you have any contact between the needy and headquarters?

A. Many times I do myself, direct to the—myself.

Mr. Bassett: That is so vague I don't know what it is he does himself.

The Court: I am a little in the dark myself.

By Mr. Wallis:

Q. What do you have reference to Reverend, some they do and some you do yourself?

A. If it is too small to leave to the Gospel Army I will help and somebody that is really hungry I take them in and give them a meal.

Q. That is into your own home?

A. I mean if I meet somebody that is real hungry I take them in a restaurant and feed them out of my pocket.

Q. Other times you submit it to the Gospel Army and it is taken care of at headquarters, is that correct?

A. That is correct.

Q. What kind of—strike that. The Gospel Army does it have members of the organization?

A. Just the workers.

Mr. Bassett: Just a moment, there has been no testimony as to the Gospel Army, except a corporation, so far.

Mr. Wallis: No testimony of a——

Mr. Bassett: As to the Gospel Army, except a corporation. Are you asking if a corporation has any members?

Mr. Wallis: That is his evidence, it would have to have. [fol. 77] I withdraw the question.

The Court: He has withdrawn it.

Mr. Wallis: That is all then.

Cross-examination.

By Mr. Bassett:

Q. What did you do before you acted for this plaintiff?

A. Before I came into the Gospel Army?

Q. Yes.

A. I used to work in different kinds of work and preached in between times.

Q. What kind of work?

A. I worked for the Southern California Lumber Company at 15th and Alameda for 8 years. I was a panel man there.

Q. Now, you say that you received some authorization in the Army to act as a minister. What kind, if any, qualifications did you present to the Army at the time that this authorization was given you?

A. Is that to me?

Q. Yes.

A. I don't know; I don't get the question.

Mr. Bassett: Read it.

(The last question is read by the reporter.)

A. I don't know what it really means.

Q. Well, Mr. Wallis here calls you Reverend, I believe. I assume that he refers to a qualification of or authority granted you by plaintiff to act as a minister for them.

[fol. 78] Mr. Wallis: He testified he was ordained by them.

Mr. Bassett: I am just trying to define the word "ordained". If you don't mean——

A. Well, I have been ordained.

Q. By whom?

A. By the Gospel Army and anywheres Evangelical Workers.

Q. What is that?

A. Sir?

Q. What is that?

A. They are Evangelical preachers that go to missions to preach wherever there is an opening. Whatever I received, license, local license from the Nazarene Church. They issued them every year when I was with them.

Q. Do you have that license now?

A. No, sir, I am not a member with them.

Q. Now we will get back to the question that I asked you. Perhaps, it will be clearer. At the time you were authorized or ordained, if you want to call it, by the Gospel Army, what qualifications did you present to the Army in that behalf?

Mr. Wallis: We object to it, if the Court please, as assuming something not in evidence, not proper cross-examination. We are not testing the qualifications of this man.

The Court: There has been an allegation by the defendants that they are not a religious organization. I feel that [fol. 79] this is material.

Mr. Wallis: Very well, your Honor.

By Mr. Bassett:

Q. Can't you answer?

A. Well, they never asked me for any. They just—I come into the ordination through recommendation.

Q. Are you paid a regular salary by the Gospel Army?

A. No, sir.

Q. What financial return do you receive for this work?
A. Well, I have the authority to solicit and I give part time that way.
Q. Then when you solicit funds, upon what arrangement or basis are those funds received by you?
A. Under the same order as the others.
Q. Oh, 70 percent to the corporation, is that it?
A. Oh, no, I don't work full time. I just put in just enough to make my expenses.
Q. I see. Then you solicit until you have enough to make your expenses and then stop, is that it?
A. Yes, I just make expenses. I live by faith and that is the way I live.
Q. Do you make a return to the Treasurer of the amount of money that you have solicited and received?
A. No.

Mr. Bassett: I think that is all.
The Court: May I ask a question.

By the Court:

Q. This place where you hold your mission, Reverend [fol. 80] Perigo, is that a rented piece of property that is rented from someone?
A. Yes, sir.
Q. You pays the rent on that?
A. The Gospel Army.
Q. Do you ever remit anything to the Army to cover the rental?
A. No.
Q. There is no part—I want to get this clear in my mind—is there any part of the collections?
A. They don't have collections.
Q. They don't have collections in the Mission at all?
A. Not in the Mission.
Q. Is there any part of the money that you solicit remitted to the Gospel Army to pay the rent of this property?
A. No.
Q. And you told me you didn't pay it yourself?
A. No, sir.

The Court: All right.
Mr. Wallis: That is all.
Mr. Bassett: That is all.

Mr. Wallis: Call Mrs. Colbert. May Mr. Perigo be excused?

The Court: Yes, if you want to.

[fol. 81] RUTH COLBERT, having been previously sworn resumes the witness stand for further

Direct examination.

By Mr. Wallis:

Q. I think you testified this morning Mrs. Colbert that you had charge of the industrial department?

A. Yes, sir.

Q. And had been the head of the industrial department for the past 6 years?

A. That is right.

Q. That is owned and operated is it by the Gospel Army?

A. That is right.

Q. As a branch and part of the Gospel Army?

A. It is.

Q. You have a store you say on South Broadway?

A. That is right, 9206.

Q. And you have trucks do you, that you operate?

A. Yes.

Q. How many trucks are operated?

A. We are operating 4.

Q. What is the function of those trucks?

A. Going through the districts and collecting salvage.

Q. The salvage then is returned and delivered to you?

A. The portion to be sold is returned to the store, the [fol. 82] rest goes directly to the mill.

Q. The part that goes to the store, is that the part that can be salvaged?

A. Yes, sir.

Q. And then reconditioned?

A. Yes, sir.

Q. And placed up for sale?

A. That is right.

Q. What is the nature of the sale, how do you arrive at a price or——

A. Well, a price according to the item, according to the condition of the item.

Q. And that is sold to the general public, is it?

A. That is right.

Q. Now, the articles that cannot be used, such as newspapers and junk, that is sold to junk yards?

A. At the mill.

Q. That money is turned over to you?

A. It is turned over to pay the upkeep of the salvage every day.

Q. What do you pay the operators of the trucks?

A. It is a percentage of what is sold.

Q. To the mill?

A. To the mill.

Q. And they do not participate in anyway in the store?

A. No.

[fol. 83] Q. You heard Mr. Patton's testimony that the truck driver has charge of certain solicitors on that truck?

A. That is correct.

Q. Do all of the people that work on that truck receive the same percentage?

A. They receive less than the driver. I would quote a salary of 50 cents an hour on the solicitors.

Q. That is what it averages?

A. That is what they average.

Q. Where are the solicitors obtained from?

A. They have been steady men for the last 2 or 3 years, the majority of them.

Q. And how often are they paid?

A. Daily.

Q. Then the place that you have your store is a rented place?

A. It is.

Q. Who pays the rent?

A. I pay the rent on it, it comes out of the Gospel Army funds.

Q. In connection with the industrial department, do they do any charity work?

A. Yes, we do.

Q. Have they during the past 6 years?

A. We have, not frequent, it is just at intervals when people need clothing, shoes for their children, anything [fol. 84] of necessity for their working apparel, we see they have it and are not charged for it.

Q. Do people of the store receive a percentage or salary?

A. Salary.

Q. Do you receive a salary?

A. Yes, sir.

Q. Do you devote your entire time?

A. Yes, sir.

Q. After all expenses are taken out, the money is turned over to the Gospel Army?

A. Yes, sir.

Q. I will ask you if you know Miss Spaulding of the Social Service?

A. Yes, sir, I do.

Q. Have you ever had any conversation with her?

A. Not recently; it has been some time ago.

Q. You haven't had any since this suit was filed?

A. No, I haven't.

Q. With reference to the Social Service, did you ever file an application there with them asking for permit on behalf of the Gospel Army?

A. I have.

Q. Was that application ever granted?

A. They granted me a card for 30 days. For each man I brought into the office, it was then and prior. I had [fol. 85] cards for 30 days. At the end of the 30 days I returned the cards to the office to Miss Spaulding with a notation she was to issue me new cards which she did not.

Q. Prior to the filing of the suit, were you visited by anyone from her office?

A. I have been from the Commissioner's office.

Q. Did they make any statement to you?

Mr. Bassett: That is objected to as calling for hearsay.

By Mr. Wallis:

Q. How do you know they were from the Department of Public Service?

Mr. Bassett: That is immaterial too. In other words, the City of Los Angeles is here as a defendant. Now the Department of Social Service is not an organic part at all of the City of Los Angeles. It is merely one of a commission or employee. It is not mentioned in the charter. It is not anybody who can bind the city. It has no control of any funds. It simply is one of the organizations that work there. I assume counsel means we are charged with notice of what somebody in that department may have said. That is purely hearsay as to us.

Mr. Wallis: If counsel will tell me if an employee of the Department of Social Service is not operating under the City Charter I would like to know right now. It is a branch of Los Angeles.

The Court: What if it is. This department, Mr. Bassett, [fol. 86] is it or is it not a department which has charge of investigating these charity organizations or assumed charity organizations?

Mr. Wallis: Under the City Clerk there are various departments that do various things.

Mr. Bassett: Here is an organization again that the City Clerk collects the licenses and he has the moneys and has authorities but this particular duty, you might call it a group of employees that is in Social Service. That is not an organic part of the city.

Mr. Wallis: It is created by ordinance, isn't it?

Mr. Bassett: It is not created by ordinance in the sense it has any rights.

Mr. Wallis: It is so pleaded.

Mr. Bassett: Except to do certain investigations they have no money and no control.

Mr. Wallis: They have certain functions under the City Charter.

Mr. Bassett: Suppose they have?

Mr. Wallis: That is all right if they are interfering with this organization.

Mr. Bassett: They can't bind the city.

The Court: In the pleadings, the defendants' pleadings here there was an admission that is the nature of the Board. What is the last question?

(The last question is read by the reporter.)

[fol. 87] The Court: Any statement that was made would not necessarily be binding on the city in the absence of any showing that it was. Nevertheless, indicating a course of conduct this plaintiff may have followed thereafter, might have been led to believe guaranteed it would be material. You may answer the question.

A. They gave me a citation to appear at the Commissioner's office. They told me I had to appear a certain date that was posted on the citation.

By Mr. Wallis:

Q. Mrs. Colbert, I show you a letter on the letterhead of the Department of Social Service and ask you if you ever received that through the United States mail?

A. Yes, I have.

Mr. Wallis: We offer this, your Honor.

The Court: Plaintiff's Exhibit 3. Letter of August 6th.

Mr. Bassett: What is the purpose of these letters? Perhaps we may agree on it.

Mr. Wallis: We have alleged in our complaint certain interference. We have to prove it.

Mr. Bassett: Now, if you intend to offer those letters, we object on the ground——

Mr. Wallis: I haven't even had them identified as yet, Mr. Bassett.

Mr. Bassett: I am just telling you now so you won't be [fol. 88] surprised.

By Mr. Wallis:

Q. Mrs. Colbert, after you received this letter marked Plaintiff's Exhibit 3, did you file a bond as they required?

A. No, sir, I did not.

Q. As a matter of fact after the letter there was nothing done on your part in connection with it?

A. No, not pertaining to the bond.

Q. I show you a letter from the City Attorney of Los Angeles, Criminal Division, under date of November 21st, 1941, and ask you if you received that through the United States mail?

A. Yes, sir, I have received that.

Q. You received that?

A. Yes, sir.

Mr. Wallis: We wish to offer this letter, your Honor, as our next exhibit in order.

The Court: Plaintiff's Number 4. It is letter of 11-21-41.

By Mr. Wallis:

Q. I show you a letter——

Mr. Bassett: Just a minute. What is that?

Mr. Wallis: What——

Mr. Bassett: What is this you are now talking about?

Mr. Wallis: You saw it.

Mr. Bassett: I didn't see but one letter and you have offered that.

[fol. 89] Mr. Wallis: I handed counsel all the letters and he handed them back to me and said I was going to have a surprise.

Mr. Bassett: If counsel wants those in, they are objected to on the ground they are incompetent, irrelevant and immaterial. There is no objection to the foundation.

The Court: Perhaps they could be received as a file, or can they?

Mr. Wallis: They can be connected and received as one exhibit, part of this Exhibit 4.

The Court: All right, let's see them. On the record now, Mr. Wallis, I notice one of these is dated August 6th, 1940.

Mr. Wallis: Well, counsel has been going away back to 1930.

The Court: You realized one was dated away back. I will receive as a part of Plaintiff's Exhibit 4 the following letters all to Ruth Colbert, August 6th, 1940, City Clerk by Foster R. King; August 28, 1941, Department of Social Service by Ferris Miller, General Manager; September 24th, 1941, addressed to The Gospel Army from the City Attorney's office. Then I am filing chronologically this letter which has formerly been admitted as Plaintiff's Number 4 heretofore, City Attorney's letter of July 14th, 1942, addressed to Ruth Colbert. This all now becomes Plaintiff's Exhibit 4.

[fol. 90] By Mr. Wallis:

Q. Mrs. Colbert, at the time you became connected with the Gospel Army who was the General in charge?

A. General William Mobley.

Q. What was his designation or what was his office with the company?

A. He was just chief, General and Commanding Chief, in other words.

Q. He was the head of the organization?

A. Yes.

Q. Was he the head of the organization during the entire time that you were there?

A. Yes, sir.

Q. Up until the time of his death?

A. That is right.

Q. Now with reference to his successor, who was he?

A. L. D. Hubbard.

Q. Do you know where he is?

A. He is in the United States Army right now.

Q. He is not within the State of California?

A. No.

Q. Mrs. Colbert have you been devoting your entire time to the industrial department of the Gospel Army?

A. Yes, sir, I have.

Q. All your activities have been under the authorization of the Gospel Army?

[fol. 91] A. That is right.

Q. Your department is a branch of the Gospel Army?

A. It is.

Q. Now, are you familiar or do you have any personal knowledge of any charitable work done by the Gospel Army?

A. Well, to aid the needy, if anyone needs clothes or food, yes.

Mr. Bassett: I object the answer is not responsive and too general and vague.

Mr. Wallis: It is an answer, your Honor. I think I am the only one that can object to it.

The Court: I think the answer is permissible. Motion is denied.

By Mr. Wallis:

Q. Does the industrial department have any department that contributes to the needy?

A. Clothing.

Q. That comes out of the industrial fund, does it?

A. Comes out of the industrial fund, yes.

Q. Under your supervision, during the past 6 years, have you personally supervised the distribution of clothing to those in distress?

A. Yes, I have receipts on hands to show they received clothing.

Q. Have you also distributed money?

A. No, outside of carfare to a man to go to town.

Q. Where is the money distributed from to aid the [fol. 92] needy?

A. From the office.

Mr. Bassett: That is objected to as assuming a fact not in evidence.

The Court: She cannot testify, I assume, of her own knowledge. The objection is sustained and the answer stricken.

By Mr. Wallis:

Q. In addition to head of the industrial department what other official position, if any, do you hold with the Gospel Army?

A. I have charge of the bookkeeping.

Q. Anything else?

A. Well, I have the clothing disinfected; I take care of that.

Q. That is in the industrial department?

A. That is in the industrial department.

Q. Do you have any title?

A. Manager.

Q. Are you a director of the corporation?

A. Yes, sir.

Q. As a director do you sit in on the directors' meeting?

A. Yes, sir, I do.

Q. Are you familiar with the functions of the Gospel Army, as has transpired in that meeting?

A. Yes, sir.

By the Court:

Q. When you said you had charge of the books, you meant [fol. 93] for the industrial?

A. Yes, sir.

By Mr. Wallis:

Q. Mrs. Colbert, do you know any literature that is distributed from the Gospel Army?

A. No, sir, other than its tracts.

Q. From the industrial department?

A. No.

Q. Your solicitors do not distribute any?

A. No, we don't.

Q. Now after all expenses and your salary and the salary of the workers on the trucks and the upkeep of the trucks, I take it the upkeep of the truck is part of the expenses?

A. It is, tires and so forth.

Q. Then you remit the net to Mr. Patton?

A. That is right.

Q. Now since this suit was filed, Mrs. Colbert, have you received any letters from the Social Service or any other branch of the City of Los Angeles?

A. No.

Q. Regarding——

Mr. Bassett: That is objected to.

Mr. Wallis: Wait until I finish before you object.

Mr. Bassett: I don't care what it is about.

The Court: He may finish his question, however, Mr. Bassett. Finish your question, Mr. Wallis.

[fol. 94] By Mr. Wallis:

Q. With reference to the matters referred to in Exhibit 4 and which are the letters which were just recently shown to you?

A. I haven't received anything.

The Court: The answer was I haven't.

Mr. Bassett: That is right, all right, if she says that, go ahead.

By Mr. Wallis:

Q. Mrs. Colbert, as a director of the Gospel Army, the plaintiff in this action, do you know of any other activities they have other than has been testified here?

A. No, sir, I do not.

Q. And during your connection with the Gospel Army have you had any other activity than what has been testified to?

A. No, sir.

Q. Prior to the filing of this action do you have any personal knowledge of anyone from the Social Service or any other branch of the Service interfering with the collection of salvage articles?

Mr. Bassett: That is objected to as too vague, "anything."

The Court: It is preliminar.

Mr. Bassett: If she would answer "yes" or "no" I wouldn't object to it.

Mr. Wallis: It is hard to simmer down.

[fol. 95] By the Court:

Q. Was there such occasion or occasions?

A. Yes, we had been stopped.

The Court: Just stop there.

By Mr. Wallis:

Q. You had been?
A. Yes.

The Court: The answer was "yes" and we will strike all other parts of the answer and the next question.

Mr. Wallis: That is all, Mrs. Colbert.

The Court: I see no prejudice if we hold this cross-examination until tomorrow.

Mr. Bassett: Tomorrow, yes, sir.

The Court: Continued tomorrow at 9:30.

Mr. Bassett: Mr. Wallis has been kind enough to say that as to these ordinances mentioned in the answer he makes no objection.

The Court: Those will be received as Defendants' next in order.

[fol. 96] Thursday, March 11th, 1943. 9:30 O'Clock, A. M.

The Court: All right, we can proceed in this.

Ruth Colbert, having been previously sworn, resumes the witness stand and testifies as follows:

Cross-examination.

By Mr. Bassett:

Q. Mrs. Colbert, what portion of the moneys received by your truck drivers from the sale of mill material or mill sales, as you call it, I believe, is returned to you?
A. What portion?
Q. Yes.
A. There is only 10 per cent and that is turned over to headquarters.
Q. And of the 90 per cent received by them then do they pay the employees, the solicitors, the laborers?
A. Yes, sir.
Q. Now, Mrs. Colbert, are you a widow?
A. Yes, I am.
Q. You mean your husband is not living?
A. He is living but we are separated.

Q. Then you are not a widow?
A. I am by divorce.

Mr. Wallis: Grass Widow.

A. Grass Widow, yes.

By Mr. Bassett:

Q. Your former husband is engaged in the same business, [fol. 97] is he not?
A. To my knowledge he is not with the same organization.
Q. What organization, if you know?
A. Emanuel Christian Workers.
Q. Now, is any detailed report made to you from persons to whom material is sold as to the amount paid by them to your truckmen?
A. Yes, they admit to me every night when they come in of how much they paid the men.

Mr. Bassett: Read the question again.

(The last question is read by the reporter.)

A. Yes.

The Court: I don't understand, do you mean the mills?
Mr. Bassett: Exactly. Persons to whom they sell, isn't it clear, a report by persons to whom they sell.
The Court: There might be individuals to whom material is sold also.
Mr. Bassett: Any person to whom they sell.
The Court: You are referring to truck drivers?
Mr. Bassett: Truck drivers.
The Court: Not to the store itself?
The Witness: The answer is yes.

By Mr. Bassett:

Q. You have those statements?
A. Yes, sir.
Q. Now, who was the successor to Mobley?
[fol. 98] A. L. D. Hubbard.
Q. L. D. Hubbard?
A. Yes, sir.

Mr. Bassett: That is all.
Mr. Wallis: That is all. We rest, your Honor.

MOTION FOR NON-SUIT.

Mr. Bassett: Defendant now moves for non-suit upon the ground that, and for dismissal, upon the ground that the plaintiff has not made out a cause of action and upon the grounds heretofore stated in support of the demurrer to the evidence at the opening of this cause and further that it does, has not appeared that the plaintiff has no relief at law or that the plaintiff would upon the facts alleged or upon the facts proved suffer irreparable injury.

The Court: That motion is denied.

Mr. Bassett: May we have a stipulation that the ordinances referred to in Paragraph III of the amended answer to the complaint and those portions of the Charter therein referred to may be deemed to have been introduced by reference.

Mr. Wallis: That was my understanding, yes.

The Court: Incidentally, I have not read these ordinances yet but I will get around to that. Those you introduced in evidence yesterday, I haven't read those yet.

Mr. Bassett: I have a witness who was to be here before this. He is just across the street.

[fol. 99] The Court: We can take a recess.

Mr. Wallis: You can call him.

Mr. Bassett: Yes, I will call him. As to the main ordinance, that is in the Code.

The Court: That is admitted by reference. That is actually introduced. That would be Defendants' "E" by reference.

(Recess.)

FERRIS MILLER, a witness called by and on behalf of the defendants, being first duly sworn, testified as follows:

By the Clerk:

Q. State your name, please?
A. Ferris Miller.

Direct examination.

By Mr. Bassett:

Q. Mr. Miller, what is your office or association in connection with the City of Los Angeles?

A. You mean my department? The Social Service Department of the City of Los Angeles.

Q. What office do you bear in that department?

A. The manager and Secretary.

Q. I invite your attention now to Plaintiff's Exhibit [fol. 100] 4 and ask you if you were the head of that department at the time that these letters variously dated August to December, August of '40 to February '42, as they appear, if you were head of the department at that time?

A. Yes, I was.

Q. As such head have you had contact with the persons operating and acting as the Gospel Army in the city?

A. Yes.

Q. Will you explain to the Court what requests and demands were made by your department upon the Gospel Army?

Mr. Wallis: We object to that if it is by letter or word of mouth.

The Court: He may answer it.

A. The department asked the Gospel Army to comply with the solicitation.

The Court: Now, I will stop you, Mr. Miller. You can lay a better foundation than that Mr. Bassett.

Mr. Bassett: Yes.

Q. Inviting your attention to the letter of August 28th in this exhibit will you state what portion of the ordinance of the City of Los Angeles is there referred to?

A. Referring to the services of the person who was permitting the solicitation for the Gospel Army which at that time was Mrs. Ruth Colbert. Our action was asking her to apply for and receive a license as the person permitting this solicitation.

[fol. 101] Q. And that license is upon what character of business?

A. Well, the permission of a solicitation for a charitable purpose.

Q. Did you have any personal contact at that time with persons representing the Army?

A. Not at that time, but previous to that time.

Q. Could you state where and with whom you had contact previous to that time?

Mr. Wallis: The time.

By Mr. Bassett:

Q. When and with whom, I should say.

A. Well, I had contact with Mrs. Colbert and also with the commanding officer of the organization, Mr. Mobley.

Q. About when?

A. Well, it was just prior to the issuance of this letter, perhaps, a matter of a few weeks. I notice one letter was dated August 6th, and then I wrote another on the 28th, calling attention to the first letter.

Q. This conversation took place in your office?

A. Yes.

Q. Will you state what was the subject of it, what was said?

A. Well, as I recall it, I asked Mrs. Colbert to file an application for the license and one of my assistants also had a conversation with her regarding that same subject.

By Mr. Wallis:

Q. Were you present?

A. Yes, I was present at that particular time.

[fol. 102] Q. Yes, but you were not present when one of your assistants talked to her?

A. Yes, I was at one time, one of those conversations.

By Mr. Bassett:

Q. Has your department ever denied any applications to the Gospel Army for leave to conduct its business?

Mr. Wallis: We object to that, if the Court please.

Mr. Bassett: Very well, I will withdraw it.

Q. Has your department at any time denied any application of the Gospel Army for license or permission to conduct salvage operations for charitable purposes?

A. No, I think not.

Mr. Wallis: Well, now if the Court please, we ask that the answer go out as not a positive answer, he thinks not. Unless he knows he should not say.

Mr. Bassett: That is subject to cross-examination.

The Court: The objection, I believe, is well taken, Mr. Bassett, therefore, plaintiff's motion is granted.

Mr. Wallis: Strike it.
The Court: It will be stricken.

By Mr. Bassett:

Q. Do you know whether or not any application of the Gospel Army for any permit from the city has ever been denied during the period when you were at the head of this department?

A. No, it has not been denied.

Q. In your conversations with Mrs. Colbert or the de-
[fol. 103] ceased General or anyone else acting in behalf of the Gospel Army, was there any requirement or demand made by you in regard to any religious activities of this organization?

A. No, the religious aspect was not discussed with Mrs. Colbert. We were not interested in that.

Q. Was it discussed with the General? I refer now to the president of the corporation.

A. Well, only to this extent, that we always assured General Mobley that we were not interested in the religious activities as they were not under our jurisdiction.

Q. Yes. Then the only jurisdiction discussed as between you and the General or the head of this salvage department was as to their operations for charitable purposes, is that it?

A. That is true.

Mr. Bassett: Take the witness.

Cross-examination.

By Mr. Wallis:

Q. Mr. Miller, as head of the Social Service you keep a file on every organization such as this, do you?

A. Yes.

Q. That file is here in court, is it not?

A. That I do not know.

Q. Will you step down and check the file with Mr. Bassett and see?

[fol. 104] A. O. K.

Mr. Wallis: It is here isn't it, Mr. Bassett?
Mr. Bassett: You designate what you want.

Mr. Wallis: I want the file on this organization of the Social Service.

Mr. Bassett: Well, we will see.

Mr. Wallis: That is the one.

Mr. Bassett: Apparently you are already acquainted with it.

Mr. Wallis: I am acquainted with it. I have been over there several times.

The Court: Do you know whether or not it is the record?

Mr. Bassett: This is something handed to me by some one in the department. This is the head of the department. I want him to look for it.

Mr. Wallis: Is that all in the folder?

Mr. Bassett: That is all that has to do with the Gospel Army.

Mr. Wallis: Will you instruct counsel to let me see the folder?

The Court: Mr. Wallis, you are not entitled to go through private papers of the city.

Mr. Wallis: It is a public record.

The Court: The matter pertaining to the Gospel Army is not.

[fol. 105] By Mr. Wallis:

Q. Will you look at it and see if there is anything else in the folder?

A. This is the file.

By the Court:

Q. Mr. Miller, you have some papers in your hand.

A. This is a part of the department file.

Q. Is there some more here?

A. I assume there is, I am not sure.

Q. Will you look and see?

A. Yes, that appears to be part of the file.

Mr. Bassett: If Mr. Wallis will state what he wants to prove or find, perhaps, we can admit it.

Mr. Wallis: I just wanted to find out how many applications had been filed by the Gospel Army.

Mr. Bassett: Why not ask the witness then.

By Mr. Wallis:

Q. Mr. Miller, how long have you been head of the Social Service?

A. About 7 years.

Q. And do you recall approximately the time you talked to Mrs. Colbert in your office?

A. Oh, I imagine it has been a year and a half ago, probably. I talked with her a number of times in the office.

Q. Was General Mobley always with her when you talked to her?

A. No.

Q. You are confident you told both these people you were [fol. 106] not interested in their religious activities but only as a matter of collecting for charity?

A. Yes, I have explained that to them numerous times.

Q. In your experience in Social Service is charity considered a religious activity or not?

A. I don't get that.

Q. From your experience in Social Service is charity considered a religious activity or not?

A. Well, the ordinance differentiates between the two.

Q. By reason of the ordinance then you would say that charity was not a religious activity, is that correct?

Mr. Bassett: Just a moment, that is objected to. It it not up to him. He is an officer of the city who is carrying out the ordinance. It is immaterial what he personally thinks.

The Court: He has had a discussion with these people. He may answer.

A. I have always pointed out to Mr. Mobley and to others in this organization with whom I have talked that our jurisdiction did not extend to his religious activities. It is true that religious organizations do charitable work and it is up to the jurisdiction, even some of the churches do that work. They solicit outside of their own walls.

By Mr. Wallis:

Q. That has been your practice that any religious organization must first obtain a permit from Social Service before [fol. 107] they can solicit for charity?

A. That is right.

Q. You know, do you not, Mr. Miller, that the Gospel Army from your investigation and information that came

to you was an established religious organization, did you not?

Mr. Bassett: We object to that as a conclusion of the witness.

Mr. Wallis: I asked from his investigation.

The Court: Mr. Wallis, assume that is answered yes or no, it is not going prove or disprove anything here.

Mr. Wallis: No, that is true. I said from his investigation.

The Court: That still does not determine anything for us. Objection is sustained.

By Mr. Wallis:

Q. Mr. Miller, has there ever been application of the Gospel Army granted to solicit for charity?

A. Yes, there has been.

Q. Do you know on what date?

A. That was some years ago, before I became manager.

Q. On what do you base your testimony in your answer to that question, from any record or——

A. Well at one time the solicitors did have information cards from the department. That was probably a matter of 10 years ago or more. That was before my time.

Q. That was before the present ordinance went into effect? [fol. 108] A. Well, before some of the amendments were in effect yes.

Q. And had any permit been granted or issued during the last 10 years to the Gospel Army to solicit for charity that you know of?

A. No, I think not.

Q. Now, in the event an organization such as the Gospel Army does not file an application and obtain a permit, what action does the Social Service take?

A. Well, could I explain my answer?

Mr. Bassett: Yes, explain it.

A. We first require that the organization file a notice of intention to solicit. Then if there is in the arrangement some thing which indicates that a person has been employed to conduct that solicitation for pay then an additional application must be made for a license to conduct such solicitation. That is what we have asked Mrs. Colbert to file which has not been filed.

By Mr. Wallis:

Q. She, as you know, has been soliciting salvage, personal property?

A. Yes.

Q. With reference to their financial solicitors, what action has the Social Service taken with reference to those, where solicitors go out on the street and solicit money?

A. That solicitation is conducted for a religious purpose [fol. 109] and is not in our jurisdiction. The men that appear on the streets with uniforms, with tambourcens.

Q. It has not been the practice of the Social Service to in any way disturb or hinder them?

A. That is right.

Q. The notice of intention which Mrs. Colbert filed on behalf of the Gospel Army with reference to salvage, personal property, do you know of any reason other than what you testified here why that application was not granted?

A. Well, for the reason that the other application was not filed covering the appointment of a person for pay to conduct solicitation.

Q. It wasn't because she or the organization failed to post a bond, was it?

A. That was one reason; that would be one of the requirements. It is my belief Mrs. Colbert would have complied with this ordinance if it had not been for the position of her superiors. They were more opposed to it than she was, Mr. Wallis. Mr. Mobley and I think, Mr. Patton, at one time stated they did not see the thing our way and did not want to make the application. I don't recall Mrs. Colbert ever refused. She just never did, that's all.

Q. Do you have any knowledge of any charges being filed against her with the City Attorney's office, Criminal Department?

Mr. Bassett: We object to that as hearsay.

[fol. 110] The Court: He may answer.

A. Mr. Wallis, I don't think any charges were filed. The procedure of our office is if the matter comes to a point, we come to an empasse, we refer it to the City Attorney by way of citation. People are called in and they come. It is by way of accommodation. I was not present at that conference so I don't know what went on. That is a matter of our usual procedure which we have followed for years.

By Mr. Wallis:

Q. Mr. Miller, who passes on the matter of whether an organization is soliciting donations as a religious activity or as a charitable or promotional affair?

A. The notice of intention that is filed by the organization itself shows that the solicitation is charitable otherwise it would not be filed.

Q. Who passes on it, the Commission?

A. The Commission has the final word on that.

Q. It is up to the Commission to say yes or no, isn't it?

A. Yes, that is within their power.

Q. Isn't it a fact the posting of the bond—in other words, your attitude with reference to this salvage store and the collection of salvaged personal property has been that Mrs. Colbert is in the category of a promoter, is that right?

[fol. 111] A. That is right.

Q. And that she must have a license from the city to operate the store?

A. Yes.

Q. And also post a bond?

A. Yes.

Q. And how much of a bond?

A. The license is $25.00 per annum, and the surety bond is for $2000.00.

Q. And then she has to also—a report has to be made to your Social Service, does it?

A. Annually of receipts and expenditures.

Q. And also your Social Service directs how the receipts shall be applied, is that correct?

A. Well, only that they shall be applied to a charitable purpose. The details of the matter we leave to the organization.

Q. If any portion of the funds from the salvage went for religious purposes, would the Commission have any objection to that?

A. If it were for religious as distinguished from charitable?

Q. You draw a line between charitable and religious?

A. Yes, but if I might be able to make the statement, in my conversations with Mr. Mobley he never made any denial that he was conducting a charitable organization.

[fol. 112] He always maintained he was, that he was feeding the poor and keeping people in his garage and his own home contributing to their comfort.

Q. And furnishing them with food and clothing?

A. That is right. That is why I insisted it was a charitable enterprise, by his own admission.

Q. Do you draw that decision by reason of your own personal opinion or by reason of the ordinance?

A. By reason of his own statement.

Q. You say you concluded that was a charitable organization?

Mr. Bassett: We object. It has been answered.

The Court: The same question was asked and answered, Mr. Wallis.

A. Yes, that was my conclusion after my investigation.

By Mr. Wallis:

Q. Are you able, Mr. Miller, to state what has been the practice of the Social Service as to what is religious activities?

Mr. Bassett: I object to that. It is immaterial in the trial of this case what others——

The Court: I believe so.

Mr. Wallis: It is very important, your Honor.

The Court: Why is it, Mr. Wallis?

Mr. Wallis: Our contention is that the collection of salvaged personal property and the reconditioning of it and selling it in a store operated by the Gospel Army is a part of [fol. 113] their religious activity. Now Mr. Miller has just stated that Mr. Mobley admitted to them they helped the poor and needy and furnish lodgings for them and clothing. Now I want to obtain from the witness who is testifying here that they differentiate between charitable and religious organizations. I would like to see how he arrived at it.

The Court: Will you read it?

(The last question is read by the reporter.)

The Court: The objection is sustained.

By Mr. Wallis:

Q. Now, the only application that you have personal knowledge of having been granted was about 10 years ago, is that correct?

A. Yes, about that time.

Q. Now what did you mean when you testified, Mr. Miller, that there has never been any application denied since you had been head of the Social Service?

A. Application denied?

Q. Yes.

A. Why I don't recall that an application to solicit was denied. The only denial that I remember was an application for the exemption from the business license which the City Clerk issued. The Commission did not approve because they did not feel enough charitable work was being done to justify it.

Q. The final outcome of that meeting was they should [fol. 114] pay a license?

A. Yes either pay a license or qualify as a charitable organization and be exempt.

Q. Do you know whether they ever filed an application for an exempt license?

A. I believe they did.

Q. And that was denied, wasn't it?

A. That was filed with the City Clerk. The procedure is that the City Clerk refers it to the Social Service Department for approval.

Q. Your finding was they were not entitled to exemption?

A. That was the finding of the Board, not myself.

Q. The findings of the Board of Social Service was that they were not entitled to a free license?

A. We didn't establish their status as a charitable organization.

Q. I am not asking you that.

A. Perhaps I misunderstood your question.

Q. I am asking you if it was not the finding of the Board that this organization was not entitled to exemption from the license fee?

A. That is right.

Q. Isn't it a fact that the Board—withdraw that question.

The Witness: I can explain it for you if you want me [fol. 115] too.

The Court: Yes, go ahead and explain it, Mr. Miller.

A. The contract between Mrs. Colbert and the Gospel Army provided that they were to get 10 per cent of the gross collections and the Board did not feel a 10 per cent charity was entitled to an exempt license.

By the Court:

Q. Is there a license that exempts them from paying anything? They are the same type except one costs money?

A. Yes, a charitable organization making a proper showing may apply to the City Clerk and obtain a license without paying the fee. Those are referred to our department, however, for approval. Upon our approval or disapproval it is granted.

By Mr. Wallis:

Q. That is under the license ordinances not solicitation?

The Court: Do I have that ordinance too?

Mr. Bassett: Yes.

By the Court:

Q. Is there any fixed set of rules that show the department whether they qualify for the exempt license or pay license, or is that a matter of discretion on your part? When I say "your", the Commission.

A. The Commission has established a regulation which is not a part of the ordinance, but according to the City Attorney's opinion they are entitled to establish certain regulations and they have said a charity shall apply at least [fol. 116] 50 per cent of the income to charitable purposes. Of every dollar 50 cents should go to the charitable cause and not eaten up in expenses.

By the Court:

Q. So far—I may be reaching out a little bit from the material matter here. Nevertheless, I feel that the question is not entirely out of order—so far as the public is concerned, is there any requirement for the posting of a sign or notice so that the public is aware whether the charity with whom they are dealing is an exempt charity or not exempt? In other words, the charity with whom they deal is a 50 per cent net charity or a 10 per cent net charity?

A. Yes, the ordinance provides that each solicitor must carry with him an information card which is issued by our department upon the results of our investigation and we put the salient facts on that card.

Q. When you say "salient" it would include whether it is a pay license or exempt license on that card, is that showing given?

A. No, sir, it does not.

Q. Does it show what proportion of the moneys are devoted to expense?

A. Yes, upon the card it would show the percentage of the gross proceeds that are applied to charity or were applied during the last year to give the donor an idea whether it is a legitimate enterprise or not.

[fol. 117] Q. The $2000.00 bond is not included in the license?

A. No. It is licensing them to conduct a paying campaign.

Q. To whom does that bond run?

A. To the City of Los Angeles.

Q. To what purpose?

A. To secure the faithful performance of their contract, defalcations and so forth, quite similar to the bonds brokers are required to file.

Mr. Bassett: That, your Honor, is conditioned as required in the ordinance.

The Court: I was asking things that might be shown.

Mr. Bassett: I didn't want the Court to think that that was a bond cooked up by the Commission.

The Court: The only thing the Commission requires so far as fixing the regulation has to do solely with their distribution of the half, that the 50 per cent net should go back before an organization is entitled to it. Excuse me, Mr. Wallis, you may proceed.

Mr. Wallis: That is all right.

Q. Mr. Miller, following out what you testified to, in other words, anyone that has a solicitor, say a church having a solicitor go out and collect money, if they have an arrangement to give the solicitor 60 per cent, then that solicitor would have to file a bond?

A. You say a church solicitor?

[fol. 118] Q. Like this organization.

Mr. Bassett: We object to that on the ground there are two sorts of solicitors here.

The Court: Are you referring to the money solicitors?

Mr. Wallis: I wanted to get down to the license exemption. From his testimony I assumed that they arrived at that where regular financial solicitors go out, if the solicitors

only turns in 40 per cent to the church, they would not be exempt from the license.

The Court: That was not my understanding.

By Mr. Wallis:

Q. Do you understand the question?

A. You have mentioned a church solicitor. We have no interest in church solicitors.

Q. No matter whether the church gets 10 per cent or not?

A. Not for religious purposes only for charity purposes.

Q. Suppose Mr. Mobley said the money went to feed and clothe the needy; if the church used the money for the same purpose you would have no objection?

Mr. Bassett: That is immaterial whether they have any objection or not. This is cross-examination. There is specific testimony which shows their actions have to do only with this second hand shop. Now he is trying to go into another field. It is unfair to this witness to go into a field in which he says he doesn't have any jurisdiction.

(The last question is read by the reporter.)

Mr. Bassett: He has said his department does not act [fol. 119] in that field.

The Court: I don't quite understand the question.

Mr. Wallis: I will reframe it.

Q. Mr. Miller, suppose the Gospel Army, that their financial solicitors, that is the people that go out on the streets and solicit cash donations, those solicitors turned into the church 10 per cent and kept 90 per cent, would you have any objection?

A. I have no jurisdiction.

Q. Suppose the church with the 10 per cent they received devoted the entire amount to the furnishing of clothing, food and lodging to the needy, then would you have any objection?

A. No, I would not have any objection. The ordinance refers to the solicitation and not the purpose for which it is eventually used.

Q. Suppose the store operated under the name of the Gospel Army gathered up this salvaged personal property and sold it in their store after they reconditioned it and gave the Gospel Army headquarters 10 per cent and they used that 10 per cent for charitable purposes, would you object?

A. If it was solicited on the basis of a charitable intention.

Q. Suppose it was solicited only under the name of the Gospel Army?

Mr. Bassett: That is objected to. You cannot assume [fol. 120] a fact not in evidence.

The Court: He may answer.

A. Well, the merchandise is solicited under the representation it does go for a charitable purpose.

By Mr. Wallis:

Q. How do you know?

A. I have had them call at my own home.

Q. And did they have any credentials with them?

A. Yes, they had a credential signed by Mr. Mobley.

Q. How long ago has that been?

A. That has been a couple of years ago. It was while this matter was still under discussion.

Q. While it was boiling?

A. Yes.

Q. Was that before the suit was filed?

A. Yes. There has never been any denial they were soliciting for a charitable purpose but they said they did not admit our jurisdiction.

Q. They said they considered the charitable part of their religious activities?

A. They did, but my point is my ordinances differentiate between the two.

Q. And that is the stand the Commission has taken?

A. That is right.

Q. There has been no interference or demand made by the Social Service of the Plaintiff or any of the agents or officials of the Gospel Army since this suit was filed has [fol. 121] there, Mr. Miller?

A. No, I don't think so.

Mr. Wallis: That is all. Oh, just a minute I did want to ask one other question.

Q. Do you know Mr. Budd, Mr. Miller?

A. No, I don't recall his name.

Q. Have you ever heard of him?

A. Budd?

Q. Yes.
A. No, I don't know him.
Q. Is he an investigator out of your department?
A. No.
Q. Have you had any conversation with him as an investigator out of the Police Commissioner?
A. No, I don't know him at all.
Q. How about Mr. Davis?
A. No, I don't know.

Mr. Bassett: That is objected to unless you give his initials.

Mr. Wallis: He knows what I am talking about.

Mr. Bassett: Who are you talking about, I would like to know.

The Witness: I would say I have no knowledge of what you two are talking about.

Mr. Wallis: That is all.

Mr. Bassett: That is all. Defendants rest.

[fol. 122] Mr. Wallis: No rebuttal, your Honor.

The Court: Do you people want to talk about this, argue it? If so, I will be glad to listen to you or you may submit it without argument.

Mr. Wallis: I am willing to submit it without argument. I think we have argued it enough on the demurrer. The Court has heard the evidence.

Mr. Bassett: I think we prefer to argue it.

The Court: All right.

Mr. Wallis: I will reserve the right to answer counsel go ahead.

Mr. Bassett: We waive any argument.

The Court: Mr. Wallis, do you want to say anything?

Mr. Wallis: No. It is just a matter, as I see it, it is a question whether it is an arbitrary rule.

The Court: All right, the case is then submitted.

[fol. 123] Reporter's Certificate to foregoing transcript omitted in printing.

[fol. 124] STIPULATION

We hereby stipulate that the foregoing transcript is a full, true and fair transcript of the proceedings had at the trial, the testimony offered or taken, oral evidence offered or re-

ceived, actions and statements of the Court, also all objections and exceptions of counsel and matters to which the same relate.

——— ———, Attorney for Plaintiff. Ray L. Chesebro, City Attorney, By Wilbur Bassett, Deputy, Attorney for Defendants.

[fol. 125] CLERK'S CERTIFICATE

Notice of settling record on appeal having been mailed to the attorneys and no request for correction of transcript having been filed, and the time for said filing having expired, pursuant to rule 8(a) I hereby certify the foregoing record consisting of 94 pages to be a full, true and fair transcript on appeal.

Dated August 23, 1943.

J. F. Moroney, County Clerk, By G. G. Dunn, Deputy.

[fol. 126] IN THE SUPREME COURT OF CALIFORNIA, IN BANK

2nd Civ. No. 14276 (L.A. 18,808)

GOSPEL ARMY

v.

CITY OF LOS ANGELES

ORDER TRANSFERRING CAUSE—Filed March 9, 1944

The above entitled cause, now pending in the District Court of Appeal of the Second Appellate District, Division Two, is transferred to the Supreme Court.

Gibson, Chief Justice.

Dated March 9, 1944.

[File endorsement omitted.]

[fol. 127] IN SUPREME COURT OF CALIFORNIA

OPINION OF THE COURT—Filed November 20, 1945

TRAYNOR, J.

Certain ordinances of the City of Los Angeles regulate transactions in secondhand goods and solicitations for charitable purposes. Plaintiff, an incorporated religious organization, brought this suit to enjoin the enforcement of these ordinances as applied to it on the ground they abridged its religious liberty in violation of the Constitution of the United States and the Constitution of California. The trial court found that plaintiff is "engaged exclusively in the promulgation, by literature and word of mouth, of its religious beliefs, by and through its auxiliaries, and in the procuring of donations in the form of money and articles of value in the prosecution and furtherance of its religious activities." It enjoined defendants from "further interference and threatened acts, which would in any way prevent the free exercise of the religious liberty and freedom of worship of the said Plaintiff." Defendants appeal.

The finding of the trial court must be viewed in the light of the evidence, which is undisputed. Religious services at plaintiff's mission are conducted by a minister ordained by it whose compensation depends entirely on solicited contributions. Plaintiff engages in missionary work, distributes the New Testament and religious tracts free to the [fol. 128] public, and gives assistance to those in need. It collects salvage from the public to obtain funds to propagate its religious doctrines and to provide aid to the poor. Some of the salvage is sold in a secondhand goods store operated by plaintiff; some, such as clothing, is distributed to the poor; goods not suitable for further use go directly to a salvage mill. The salvage is collected by plaintiff's "industrial solicitors" in four of plaintiff's trucks. The money received from the sale of secondhand goods in plaintiff's store is used to meet the cost of operating the store, including the compensation paid to the manager and the solicitors. Whatever remains is paid into plaintiff's treasury. Ninety per cent of the money received for the mill material goes to the drivers of the trucks; the remainder is turned over to the manager of the store for plaintiff's treasury.

Other employees of plaintiff solicit money from the public. Solicitors make the object of their mission known by showing to prospective donors a printed card stating that "the bearer whose signature is hereon attached for identification is duly authorized to solicit money, food, clothing or any other useful articles that will help the Gospel Army to carry on their religious home missionary and evangelical work among the poor and under-privileged." About fifty per cent of the funds raised is absorbed by the cost of soliciting, including the compensation of the solicitors, which is [fol. 129] paid on a percentage basis. The funds remaining are used to pay the cost of furnishing tracts and religious literature free to the public and to supply food, lodging, clothing and car fare to the poor.

Section 24.01 of the Los Angeles Municipal Code defines a "junk dealer" as "a person having a fixed place of business in this City who goes from house to house or from place to place, gathering, collecting, buying, selling or otherwise dealing in any old rags, sacks, bottles, cans, paper, metal or other articles commonly known as "junk." A "secondhand dealer" is "a person engaging in, conducting, managing, or carrying on the business of buying, selling or otherwise dealing in secondhand goods, wares or merchandise." Junk dealers and secondhand dealers must obtain a permit to engage in business from defendant city's Board of Police Commissioners. The following "Requisites of Permits" are set forth in subsection (c) of Section 24.01: "(1) Persons desiring to obtain a permit to conduct, manage or deal in any business mentioned in subsection 'a' of this Section shall file an application in writing with the Board specifying by street and number the place where such business is proposed to be conducted or carried on; junk collectors having no fixed place of business shall specify in such application their residence by street number. The application shall be signed by the applicant and shall contain his residence address. (2) Before receiving an applica- [fol. 130] tion for any permit the Board shall require the payment of such fees as are hereafter specified. (3) Upon receipt of such application the Board shall cause to be investigated the business of the applicant and location at which applicant proposes to engage in business as specified in said application. Thereafter the Board may issue a permit to the applicant which shall be effective for the remain-

ing portion of the current year. (4) Persons operating under the provisions of this Section shall be required to secure an annual renewal of such permit commencing January 1st of the succeeding year in which such permit was granted. (5) No person holding a permit to conduct, manage, carry on or deal in any business mentioned in subsection 'a' of this Section shall buy, sell or otherwise deal in secondhand jewelry, previous stones, precious metals (including old gold), watches or other similar secondhand merchandise without first applying for and receiving a special permit therefor from the Board in the manner provided in this Section for securing ordinary permits." The fees prescribed are set forth in subsection (d): "(1) Applications for permits other than provided for in this subsection shall pay the sum provided in Section 22.10; (2) Applications for special permits, the sum of $50.00; (3) Applications for annual permit renewal, the sum of $25.00; (4) applications for changing location of place of business for which a permit has been granted, the sum of $10.00; [fol. 131] (5) Change of ownership, the sum of $10.00, to be applicable only in cases where the new owner is already operating under a permit issued pursuant to provisions of this Section." Subsection (e) provides: "(1) The Board shall not grant any permit provided for in this Section to persons who fail, refuse or neglect to comply with the laws and ordinances relating to and regulating the business for which such permit is sought. (2) Persons applying for or obtaining permits under the provisions of this Section shall comply with the provisions of this Section." Subsection (f) provides for the revocation of permits: "Any permit issued under the provisions of this Section may be revoked or suspended upon the grounds provided for in this Section: (1) • • • If persons holding permits under the provisions of this Section shall violate any of the provisions of this Section or any provisions of any other ordinance or any law relating to or regulating any such business, or shall conduct or carry on such business in an unlawful manner, the Board, in addition to any other penalties provided by this Code, shall revoke such permit issued to such person; (2) • • • Permits granted pursuant to this Section shall be revoked only in the manner provided in Section 22.02 of this Code; (3) • • • No permit shall be granted to any person to conduct, manage, carry on or deal in any

business mentioned in subsection 'a' of this Section whose permit has been revoked by the Board until six (6) months have elapsed after such revocation." Holders of permits [fol. 132] must keep a complete record of all goods purchased or received by them, which is open to inspection by any member of the police department. They must also file with the Chief of Police daily reports on prescribed forms of the goods purchased or received during the preceding day, describing the article and specifying the hour of the day when it was acquired, the name and address of the party from whom it was acquired, the height, age, sex, complexion, and other characteristics of that person. The hours of business are prescribed. Secondhand dealers must keep the articles received by them 21 days before selling them. The period prescribed for junk dealers is three days. With respect to certain articles classed as scrap, junk dealers are exempted from the provisions requiring the keeping of records, the filing of reports, and the keeping of articles for three days. There are comparable exemptions for secondhand dealers. If a claim is made that property in the hands of the holder of a permit is stolen, the board, in the event no court action is pending, may determine whether or not the property was stolen from the claimant and order its return if it was. If such an order is disobeyed, the board may revoke the permit. The foregoing provisions are reasonable, and the standards prescribed are adequate. (In re Holmes, 187 Cal. 640, 646 (203 P. 398); Co-operative Junk Co. v. Board of Police Commissioners, 38 Cal. App. 676, 679 (177 P. 308); Zemansky v. Board of Police Commission-[fol. 133] ers, 61 Cal. App. 2d 450, 453-455 (143 P. 2d 361); see 30 A. L. R. 1427; 88 A. L. R. 970, 972; 7 Cal. Jur. 10 yr. Supp. 366; 33 Am. Jur. 336-339, 355; 47 Am. Jur. 555).

Regulation of the business of junk dealers and secondhand dealers is designed to protect the public interest by preventing such dealers from becoming outlets for stolen goods. No question arises as to the constitutionality of such regulation when the business regulated is not carried on by a religious organization. (Lewis v. Quinn, 217 Cal. 410, 413 (19 P. 2d 236); In re Holmes, supra; Co-operative Junk Co. v. Board of Police Commissioners, supra; Zemansky v. Board of Police Commissioners, supra; see 30 A. L. R. 1427; 88 A. L. R. 970, 972; 7 Cal. Jur. 10-yr. Supp. 366; 33 Am. Jur. 336-339, 355; 47 Am. Jur. 554). Business carried on by a religious organization cannot be differentiated, for

the reasons set forth below with respect to the validity of the regulation of plaintiff's solicitation of funds for charity.

Sections 44.01 to 44.19 of the Los Angeles Municipal Code regulate solicitations of funds for charity. The term "charitable" includes "Philanthropic, social service, benevolent, patriotic, either actual or purported." The term "contribution" includes "alms, food, clothing, money, property or donations under the guise of a loan of money or property." (#44.01.) Certain provisions, applicable to solicitors or charitable contributions in general, are designed primarily to secure information that will assist the public in judging [fol. 134] the nature and worthiness of the cause for which the solicitation is made and to insure the presentation of such information to prospective donors. We find nothing unduly burdensome or unreasonable in any of these provisions. Section 44.05, which is quoted in the margin,[1] re-

---

[1] "No person shall solicit, nor shall any officers or member of any association authorize any person to solicit, any contribution for any charitable purpose unless, within the fiscal year of the City in which such solicitation is made and at least within ten (10) days prior to the beginning of such solicitation, there shall have been filed with the Department, on a form furnished by said Department, by such person or association upon whose behalf the solicitation is made, written Notice of Intention to solicit such contribution, which notice shall contain complete information as follows:

"(a) The purpose of the solicitation and use of the contribution to be solicited;

"(b) A specific statement, supported by reasons and, if available, figures, showing the need for the contribution proposed to be solicited;

"(c) The character of such solicitation and how it will be made or conducted;

"(d) The expenses of the solicitation, including salaries and other items, if any, regardless of from what funds such expenses are payable;

"(e) What portion of the contributions collected as a result of the solicitation will remain available for application to the specific purposes declared in the Notice of Intention as the object of the soficitation;

[fol. 135] quires any person who solicits for any charitable purpose to file with the Department of Social Service a notice of intention to solicit ten days before the solicitation. This notice must contain, among other things, information regarding the purpose, character, method, and estimated expenses of the solicitation, the need for the contribution to be solicited, the proposed use of the solicited funds, the amount that will remain available for charitable purposes over expenses, the amount received from solicitations in the preceding calendar year, the expenses of such solicitations, and the amount that remained available for charitable purposes. The department may investigate the statements in the notice of intention. (#44.03(a).) Information cards setting forth the facts in the notice of intention and such other facts as in the opinion of the Board of Social Service Commissioners will be of assistance to the public in determining the nature and worthiness of the solicitation (Sec-

---

"(f) A specific statement of all contributions collected or received by such person or association within the calendar year immediately preceding the filing of such Notice of Intention. The expenditure or use made of such contributions, together with the names and addresses of all persons or associations receiving salaries, wages, compensation, commissions or emoluments from such contributions, and the respective amounts thereof;

"(g) The names and addresses of the officers and directors of any such association for which the solicitation is proposed to be made;

"(h) A copy of the resolution, if any, of any such association authorizing such solicitation, certified to as a true and correct copy of the original of such resolution by the officer of such association having charge of the records thereof;

"(i) A statement that the signers of such Notice have read and are familiar with the provisions of this Article and will require all solicitors engaged in such solicitation to read and be familiar with all sections of this Article prior to making any such solicitation."

tion 44.06 quoted in the margin+) are issued by the Department of Social Services for four cents per card. (#44.03 (e).) The information cards, which are in effect permits [fol. 136] to solicit, are issued automatically upon the filing of the required information and the payment of the four cents for each card. The department is given no authority to withhold such cards when these requirements are met, and we cannot assume that it will abuse its authority in order to withhold them. As this court said in In re Holmes, 187 Cal. 640, 647 (203 P. 398), quoting from In re Flaherty, 105 Cal. 558, 562 (38 P. 981, 27 L. R. A. 529) and Gaylord v. City of Pasadena, 175 Cal. 433, 437 (166 P. 348): " 'Laws are not made upon the theory of the total depravity of those who are elected to administer them; and the presumption is that municipal officers will not use these small powers villainously or for purposes of oppression or mischief.' If

---

+ "There shall be filed with the Department with such Notice of Intention a statement of any agreement made with any agent, solicitor, promoter, manager or conductor of such solicitation, together with a copy of each agreement which may be in writing. Within twenty-four hours after any change in any such agreement or the making of any new or further agreement, a true copy of such change or agreement, if in writing, or if not, written details thereof shall be filed with the Department. Whenever, in the opinion of the Board, the Notice of Intention filed with the Department does not disclose sufficient information for the public concerning the facts hereinabove required to be stated in such Notice or concerning the person or association making such solicitation or on whose behalf such solicitation is made, then, upon the request of said Department, there shall be filed, in writing, within forty-eight (48) hours after such request, such additional information as may be required by said Board upon the foregoing subjects. Provided, however, that the Board, for good cause, may extend the time for filing such additional information. The Notice of Intention and such additional information, if requested, shall be signed by such person intending to make such solicitation, or if by or on any association, by at least two officers of such association and shall be open to the inspection of the public."

this petitioner had applied for a permit under the requirement of the section of the charter above quoted, and been either whimsically or arbitrarily refused such permit, he might then, as is shown in Gaylord v. City of Pasadena, supra, have had recourse to the courts for relief from such [fol. 137] unjust and arbitrary action."

Each solicitor must exhibit an info-mation card to the prospective donor and must not make any misstatements. A solicitor must also carry written authorization from the association that he represents. The board may recall the cards and amend them if it receives additional information showing that any statements thereon are incorrect. The board may not disallow a proposed solicitation but it may investigate the statements in the notice of intention and the methods of making or conducting the solicitation; it may inspect the records of the person in charge of the solicitation and the association for whom it is made, and it may give such publicity to its findings as it deems best to reach the general public and persons interested. The association for whom the solicitation is made must maintain an accounting system recording the entry of all donations and disbursements. (#44.08.)

More restrictive provisions are applicable to promoters. A promoter is "any person who for pecuniary compensation or consideration received, or to be received, solicits or is [fol. 138] engaged in the business of or holds himself out to the public as engaged in the business of soliciting contributions for or on behalf of any other person or any charitable association, corporation or institution, or conducts, manages or carries on * * * any drive or campaign for any such purpose; provided, however, that pecuniary compensation or consideration as used herein, shall include, but shall not be limited to, participation on a percentage basis in any fund solicited, or raised, for or on behalf of any other person, firm, association or corporation; provided, further, that no person who is a bona fide paid officer or employee of a social service agency endorsed by the Board of Social Service Commissioners, shall be considered a promotoer within the meaning of this article." (#44.01.) The conditions that a social agency must meet to be endorsed by the Social Service Commission and the standards that govern the commission are set forth in a separate ordinance, the

relevant part of which is quoted in the margin.[2] In our [fol. 139] opinion the classification effected by this ordinance is reasonable and the standards provided are adequate.

[fol. 140] A promotoer must apply for a promoter's license. The application must set forth the applicant's qualifications and show that he is of good character and reputation. Per- [fol. 141] sons working as solicitors for compensation under the promoter must be registered as solicitors. The board grants a promoter's license if it is satisfied that the applicant is of good characer and reputation, is equal to the financial responsibility incident to the proposed solicitation and intends to conduct his business as promoter fairly and honestly. Similarly, before registering a solicitor, the board must be satisfied of his good character and reputation. A license fee of $25 is required for a promoter's license. A promoter must also file a $2,000 bond with the board to insure contributors against loss through theft. Solicitors must file a $500 bond and pay a registration fee of $1.00. The board may revoke a promoter's license, after a hearing, for any "unfair, unjust, inequitable or fraudulent" act of a promoter or his employees, or agents in making a solicitation or conducting the business of promoter. Any ground that would have led to denial of the license is also ground for its revocation.

---

[2] "Sec. 2. Said Commission shall have power:

"1. To investigate, when requested or permitted, by the officers or persons in charge thereof all charitable or philanthropic corporations or associations dependent upon public appeal or general solicitations for support, and submit quarterly, in writing, the result of such investigation to the Council.

"2. To endorse such of said charitable corporations or associations as shall apply to said Commission for endorsement and prove to the Commission that they have complied with the following provisions, namely:

"(a) That the title to any real property in the City of Los Angeles owned by such charitable corporation or association is vested in the name of said charity, if it be a corporation, or else in the name or names of a responsible trustee, or trustees under a declaration of trust or other

Solicitations upon premises owned or occupied by the association upon whose behalf the solicitation is made, and the soliciting of funds solely from members of the soliciting association are not subject to the provisions concerning promoters and solicitors or to certain other regulatory provisions of the ordinance. "Solicitations made solely for evangelical missionary or religious purposes" are also exempted. If, however, they are conducted in such [fol. 142] a manner as in the opinion of the board may give the persons solicited or the public the impression that the purpose of the solicitation is in whole or in part charitable, the board may investigate the matter and give such publicity to its findings as it may deem best to advise the public of the facts. (Sec. 44.16.)

Plaintiff contends that since the practice of charity and the solicitation of funds for that purpose are part of its religious duties, the ordinances regulating the solicitation of charitable contributions cannot apply to plaintiff's solicitations without abridging its religious liberty in violation of the Constitution of the United States and the Constitution of California.

Religious liberty "embraces two concepts,—freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be." (Cantwell v. State of Connecticut, 310 U. S. 296, 303 (60 S. Ct. 900, 84 L. Ed.

---

written instrument, setting forth the rights of such charitable corporation or association therein, and recorded in the records of the County Recorder of Los Angeles County.

"(b) That the declared purpose for which such a corporation or association is organized are charitable or philanthropic, and not for the pecuniary profit of the members or associates thereof or any of them.

"(c) That for three months prior to its endorsement said charitable corporation or association has faithfully complied with the following provisions with reference to its accounts, namely: All funds received by it and all disbursements made by it, have been entered upon the books of its treasurer or other financial officer, receipts have been given or tendered for all money or other property donated to it, whenever required by law or ordinance; all expenditures other than petty cash to a reasonable amount have been made by checks signed by at least two officers of such

1213, 128 A. L. R. 1352.) The constitutional guarantee protects the profession of a religious belief by word of mouth or in writing, the dissemination of the doctrines of a religious organization by preaching from the pulpits or other methods of evangelism, or the right to refuse to state beliefs against the dictates of one's conscience. (Murdock v. Pennsylvania, 319 U. S. 105, 109 (63 S. Ct. 870, 891, 87 L. Ed. 1292, 146 A. L. R. 81); West Virginia v. Barnette, 319 U. S. 624, 642 (63 S. Ct. 1178, 87 L. Ed. 1628, 147 A. L. R. 674).) [fol. 143] "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion, or force citizens to confess by word of mouth or act their faith therein." (West Virginia v. Barnette, 319 U. S. 624, 642 (63 S. Ct. 1178, 87 L. Ed. 1628, 147 A. L. R. 674).) It does not follow, however, that religious organizations enjoy unlimited freedom in carrying on all activities related to their religious program. As the United States Supreme Court declared in Murdock v. Pennsylvania, 319 U. S. 105, 109-110 (63 S. Ct. 870, 891, 87 L. Ed. 1292, 146 A. L. R. 81): "we do not intimate or suggest * * * that any conduct can be made a religious rite and by the zeal of the practitioners swept into the First Amendment. Reynolds v. United States, 98 U. S. 145, 161-167,

---

corporation or association; that the bank book of such association or corporation has been balanced and reconciled with the books of account at reasonable intervals.

"(d) That no moneys of said corporation or association are on loan directly or indirectly to any officer, director, trustee or employee thereof, and that the corporation or association for a period of three months prior to its endorsement has not invested any moneys constituting part of its permanent endowment funds except in securities legal as investments for savings banks within the State of California, and has not paid out more than 15% of any amounts collected by solicitation within the City of Los Angeles for expenses of solicitation, and has not diverted funds donated to it from any source to purposes other than those for which they were donated.

"Privided, however, that the provisions of this paragraph shall not apply to any loan or investment that has been made prior to the passage of this ordinance.

25 L. Ed. 244, and Davis v. Beason, 133 U. S. 333, 10 S. Ct. 299, 33 L. Ed. 637, denied any such claim to the practice of polygamy and bigamy. Other claims may well arise which deserve the same fate. We only hold that spreading one's religious beliefs or preaching the Gospel through distribution of religious literature and through personal visitations is an age-old type of evangelism with as high a claim to constitutional protection as the more orthodox types."

Many activities prompted by religious motives can hardly be differentiated from secular activities. If the applicability of government regulation turned on the religious mo- [fol. 144] tivation of activities, plausible motivations would multiply and in the end vitiate any regulation. "Civil liberties, as guaranteed by the Constitution, imply the existence of an organized society maintaining public order without which liberty itself would be lost is the excesses of unrestrained abuses. . . . Where a restriction of the use of highways . . . is designated to promote the public convenience in the interest of all, it cannot be disregarded by the attempted exercise of some civil right which in other circumstances would be entitled to protection. One would not be justified in ignoring the familiar red traffic light because he thought it his religious duty to disobey the mu-

---

"(e) That the work for which such corporation or association has been organized has been faithfully performed.

"(f) That the by-laws and other written rules and regulations of such corporation or association define the powers and duties of the officers of such corporation or association, and that a copy of the Articles of Incorporation of said charity, if it be a corporation, and a copy of the By-Laws and other written rules and regulations of such corporation or association have been filed with the Social Service Commission.

"(g) That within three months prior to its endorsement such a corporation or association has not violated any law or ordinance applicable to it.

"(h) That the officers and employees of such corporation or association are persons of good moral character and reputation and that the corporation or association has exercised reasonable care in selecting persons of good moral character and reasonable experience as solicitors for its funds.

nicipal command or sought by that means to direct public attention to an announcement of his opinions." (Cox v. New Hampshire, 312 U. S. 569, 574 (61 S. Ct. 762, 85 L. Ed. 1049, 133 A. L. R. 1396).) In Prince v. Massachusetts, 321 U. S. 158 (64 S. Ct. 438, 88 L. Ed. 645), it was contended that religious liberty was abridged by the application of a statute regulating child labor to a guardian who permitted her minor ward to distribute religious literature on the streets at night. In vindicating the state's power to regulate in this way the dissemination of religious beliefs, the court declared: "The parent's conflict with the state over the control of the child and his training is serious enough when only secular matters are concerned. It becomes the more so when an element of religious conviction enters. Against these sacred private interests, basic in [fol. 145] a democracy, stand the interests of society to protect the welfare of children, and the state's assertion of authority to that end, made here in a manner conceded valid if only secular things were involved. The last is no mere corporate concern of official authority. It is the interest of youth itself, and of the whole community, that children be both safeguarded from abuses and given opportunities for growing into free and independent well-developed men and citizens. Between contrary pulls of such weight, the safest and most objective recourse is to the lines already marked out, not precisely but for guides, in narrowing the no man's land where this battle has gone on . . . the family itself is not beyond regulation in the

---

"Said Commission shall issue said endorsement to any such corporation or association as shall comply with the aforesaid requirements. Said endorsement shall be valid for such time as shall be fixed by the Commission but not exceeding one year from date of its issuance.

"Said Commission shall report to the Council upon request by it the name of any corporation or association which is endorsed or has been refused endorsement by it, with a general statement of the reasons for its refusal.

"Said Commission shall also have power to request any endorsed corporation or association to make application for a new endorsement at or after the end of each fiscal year or at an earlier period if the Commission shall deem such requirement advisable, and if said corporation or association shall not do so its endorsement shall be withdrawn."

public interest, as against a claim of religious liberty. Reynolds v. United States, 98 U. S. 145, 25 L. Ed. 244; Davis v. Beason, 133 U. S. 333, 10 S. Ct. 299, 33 L. Ed. 637. And neither rights of religion nor rights of parenthood are beyond limitation. Acting to guard the general interests in youth's well being, the state as parens patriae may restrict the parent's control by requiring school attendance, regulating or prohibiting the child's labor and in many other ways. Its authority is not nullified merely because the parent grounds his claim to control the child's course of conduct on religion or conscience. . . . It is sufficient to show what indeed appellant hardly disputes, that the state has a wide range of power for limiting parental freedom and authority [fol. 146] in things affecting the child's welfare; and that this includes, to some extent, matters of conscience and religious conviction."

Activities characteristic of the secular life of the community may properly be a concern of the community even though they are carried on by a religious organization. (See, Prince v. Massachusetts, 321 U. S. 158, 165 (64 S. Ct. 438, 88 L. Ed. 645); United States v. Ballard, 322 U. S. 78, 87 (64 S. Ct. 882, 88 L. Ed. 1148); Murdock v. Pennsylvania, 319 U. S. 105, 109 (63 S. Ct. 870, 891, 87 L. Ed. 1292, 146 A. L. R. 81); Chaplinsky v. New Hampshire, 315 U. S. 568, 571 (62 S. Ct. 766, 86 L. Ed. 1031); Cox v. New Hampshire, 312 U. S. 569, 574 (61 S. Ct. 762, 85 L. Ed. 1049, 133 A. L. R. 1396); Davis v Beacon, 133 U. S. 333, 342 (10 S. Ct. 299, 33 L. Ed. 637); In re Dart, 172 Cal. 47, 56 (155 P. 63, Ann. Cas. 1917D 1127, L. R. A. 1916D 905); Chrisman v. Culinary Workers' etc., 46 Cal. App. 2d 129, 132 (115 P. 2d 553); People v. Pierson, 176 N. Y. 201 (68 N. E. 243, 98 Am. St. Rep. 666, 63 L. R. A. 187); City of St. Louis v. Hellscher, 295 Mo. 293 (242 S. W. 652); Commonwealth v. Childs, 299 Mass. 367 (12 N. E. 2d 814); Commonwealth v. Green, 268 Mass. 585 (168 N. E. 101); Commonwealth v. Plaisted, 148 Mass. 375 (19 N. E. 224, 12 Am. St. Rep. 566, 2 L. R. A. 142); State v. White, 64 N. H. 48 (5 A. 828); Stull v. Reber, 215 Pa. 156 (64 A. 419, 7 Ann. Cas. 915); Matter of Frezee, 63 Mich. 396, 405 (30 N. W. 72, 6 Am. St. Rep. 310); State v. Chenoweth, 163 Ind. 94, 99 (71 N. E. 197); see, also, Zollman, Religious Liberty in the American Law, 17 Mich. L. [fol. 147] Rev. 355, 456). Religious organizations engage in various activities such as founding colonies, operating libraries, schools, wineries, hospitals, farms, industrial and

other commercial enterprises. Conceivably, they may engage in virtually any worldly activity, but it does not follow that they may do so as specially privileged groups, free of the regulations that others must observe. If they were given such freedom, the direct consequence of their activities would be a diminution of the state's power to protect the public health and safety and the general welfare. With that power so easily diminished there would soon cease to be that separation of church and state underlying the constitutional concept of religious liberty. (See Evans v. Selma Union High School Dist., 193 Cal. 54 (222 P. 801, 31 A. L. R. 1121); Knowlton v. Baumhover, 182 Iowa 691 (166 N. W. 202, 5 A. L. R. 841); People ex rel. Ring v. Board of Education, 245 Ill. 334 (92 N. E. 251, 19 Ann. Cas. 220, 29 L. R. A. N. 442); Board of Education of Cincinnati v. Minor, 23 Ohio St. 211 (13 Am. Rep. 233); Donahoe v. Richards, 38 Me. 379 (61 Am. Dec. 256).)

There is no doubt that plaintiff, like many religious organizations, regards the practice of charity as a religious duty. It is not exclusively a religious activity, however; many charitable activities spring from sources of the everyday life of the community unrelated to religion. The state itself has an active responsibility for the welfare of the poor, the aged, the sick, the unemployed, and the orphaned. [fol 148] There is a public interest in regulating the solicitation of funds for these purposes. The very worthiness of such purposes creates a risk that the charitable impulses of people may be taken advantage of by solicitors who would collect funds under false pretenses or retain for themselves an undue percentage of what they collected. Fraud in the solicitation of charitable contributions can be most effectively controlled by measures such as the regulation in question requiring the presentation of information to enable the public to determine the nature and worthiness of the purpose for which the solicitation is made, and requiring proof of the good character and reputation of paid solicitors. In the words of Mr. Justice Shaw, speaking for a majority of the court in In re Dart, 172 Cal. 47, 56 (155 P. 63, Ann. Cas. 1917D 1127, L. R. A. 1916D 905): "The occupation of soliciting contributions to charitable purposes is clearly so far subject to the police power, that it may be regulated by laws or ordinances providing for a reasonable supervision over the persons engaged therein, and for the application and use of the contributions

received to the purposes intended, in order to prevent unscrupulous persons from obtaining money, or other things, under the pretense that they were to be applied to charity, and to prevent the wrongful diversion of such funds to other uses, or to secure them against waste. Measures reasonably tending to secure these ends are unquestion-
[fol. 149] ably valid." (See cases collected in 57 A. L. R. 516, 128 A. L. R. 1361.)

The religious organization in Cantwell v. Connecticut, supra, on which plaintiff relies, solicited funds, not for charitable purposes but for its own support. Under the statute there involved it was allowed to engage in such solicitation only if the licensing officer determined that its cause was a religious one and issued a certificate to that effect. It was held that the vesting of this power in an administrative official amounted to "censorship of religion as the means of determining its right to survive" since under the statute the official's judgment was decisive as to what constituted a religious cause. The ordinance involved in the present case specifically exempts solicitations for religious purposes only; its object is to regulate all solicitations for charitable purposes. The Board of Social Service Commissioners has no authority to appraise the nature or worthiness of a religious cause. In the Cantwell case the court recognized that even the solicitation of funds for the support of a religious organization is subject to reasonable regulation: "The general regulation, in the public interest, of solicitation, which does not involve any religious test and does not unreasonably obstruct or delay the collection of funds, is not open to any constitutional objection, even though the collection be for a religious purpose. Such regulation would not constitute a prohibited previous [fol. 150] restraint on the free exercise of religion or interpose an inadmissible obstacle to its exercise." (310 U. S. 296, 305.) Thomas v. Collins, — U. S. — (65 S. Ct. 315, Adv. Opn., 89 L. Ed. 340, 89 L. Ed. —), cited in support of plaintiff's contentions, "does not involve the solicitation of funds or property." (65 S. Ct. 315, 324.) The court there held that a state could not constitutionally require a paid union organizer to register with the Secretary of State before making a public speech inviting a nonunion worker specifically and nonunion workers in the audience generally to join the union. "We think a requirement that one must register before he undertakes to make a

public speech to enlist support for a lawful movement is quite incompatible with the requirements of the First Amendment." (65 S. Ct. 315, 327.) The court was careful, however, to distinguish cases in which the speaker solicits funds from the public: "Once the speaker goes further, however, and engages in conduct which amounts to more than the right of free discussion comprehends, as when he undertakes the collection of funds or securing subscriptions, he enters a realm where a reasonable registration or identification requirement may be imposed. In that context such solicitation would be quite different from the solicitation involved here. It would be free speech plus conduct, akin to the activities which were present, and which, it was said the State might regulate, in Schneider v. Irvington, supra, 308 U. S. 147, 84 L. Ed. 155, 60 S. Ct. [fol. 151] 146, and Cantwell v. Connecticut, 310 U. S. 296, 84 L. Ed. 1213, 60 S. Ct. 900, 128 A. L. R. 1352, both supra. That however must be done and the restriction applied, in such manner as not to intrude upon the rights of free speech and free assembly. In this case the separation was not maintained." In his concurring opinion in Thomas v. Collins Mr. Justice Jackson gives the following reasons for these variations in state power: "This wider range of power over pursuit of a calling than over speech-making is due to the different effects which the two have on interests which the state is empowered to protect. The modern state owes and attempts to perform a duty to protect the public from those who seek for one purpose or another to obtain its money. When one does so through the practice of a calling, the state may have an interest in shielding the public against the untrustworthy, the incompetent, or the irresponsible, or against unauthorized representation of agency. A usual method of performing this function is through a licensing system.

"But it cannot be the duty, because it is not the right, of the state to protect the public against false doctrine. The very purpose of the First Amendment is to foreclose public authority from assuming a guardianship of the public mind through regulating the press, speech, and religion. In this field every person must be his own watchman for truth, because the forefathers did not trust [fol. 152] any government to separate the true from the false for us. West Virginia State Board of Education v. Barnette, 319 U. S. 624, 63 S. Ct. 1178, 87 L. Ed. 1628,

147 A. L. R. 674. Nor would I. Very many are the interests which the state may protect against the practice of an occupation, very few are those it may assume to protect against the practice of propagandizing by speech or press. These are thereby left great range of freedom."

(5a) The requirement that promoters and the solicitors working under them submit proof of their good character and reputation does not discriminate against plaintiff or other religious organizations or censor their religious beliefs, nor does the regulation vest arbitrary power in the administrative board in authorizing it to withhold a license if it is not satisfied that the applicant is of good character and reputation. Such a requirement is common in statutes regulating admission to professions and occupations involving duties of a fiduciary character. (In re Stepsay, 15 Cal. (2d) 71 (90 P. (2d) 489); Spears v. State Bar, 211 Cal. 183 (294 P. 697, 72 A. L. R. 923); Leach v. Daughtery, 73 Cal. App. 83 (238 P. 160); Riley v. Chambers, 181 Cal. 589, 593 (185 P. 855, 8 A. L. R. 418); Ex parte McManus, 151 Cal. 331 (90 P. 702); Ex parte Whitley, 144 Cal. 167 (77 P. 879, 1 Ann. Cas. 13); Grundling v. Chicago, 177 U. S. 183, 187 (20 S. Ct. 633, 44 L. Ed. 725); Graves v. Minnesota, 272 U. S. 425 (47 S. Ct. 122; [fol. 153] 71 L. Ed. 331); New York ex rel. Lieberman v. Van De Carr, 199 U. S. 552 (26 S. Ct. 144, 50 O. Ed. 305); Douglas v. Noble, 261 U. S. 165 (43 S. Ct. 303, 67 L. Ed. 590); see also, 12 A. L. R. 1435, 1450; 54 A. L. R. 1104, 1112; 92 A. L. R. 400, 415; Rottsschaefer, Constitutional Law, pp. 466, 482.) The filing of a bond is also a common requirement in the regulation of occupations or activities involving the handling of entrusted funds. (Palmer v. Continental Casualty Co., 205 Cal. 34, 35 (269 P. 638); Clark v. Patterson, 213 Cal. 4 (300 P. 967, 75 A. L. R. 1124;) Grundling v. Chicago, supra; People of the State of New York v. Perretta, 253 N. Y. 305 (171 N. E. 72, 84 A. L. R. 636); see 33 Am. Jur., Licenses, sec. 54; 87 A. L. R. 145; 95 A. L. R. 1224; 103 A. L. R. 405; 120 A. L. R. 950.) The license fee is a reasonable one, covering the expenses of investigations and administration. The board has no discretion to withhold a license if the applicant's good character and reputation and his financial responsibility are established and the required bond is filed. The board is not free to deny licenses, but must act reasonably in the light of the evidence presented.

(Riley v. Chambers, 181 Cal. 589, 595 (185 P. 855, 8 A. L. R. 418); In re Holmes, 187 Cal. 640, 647 (203 P. 398); Tarpey v. McClure, 190 Cal. 593, 600 (213 P. 983); Bank of Italy v. Johnson, 200 Cal. 1, 32 (251 P. 784); People v. Globe Grain and Mill Co., 211 Cal. 121, 125 (294 P. 3); Cranford v. Jordan, 7 Cal. (2d) 465, 467 (61 P. (2d) 45); Leach v. [fol. 154] Daugherty, 73 Cal. App. 83 (238 P. 160); Hall v. Geiger-Jones Co., 242 U. S. 539, 554 (37 S. Ct. 217, 61 L. Ed. 480); Graves v. Minnesota, supra, P. 428; Douglas v. Noble, supra, p. 170; New York ex rel. Lieberman v. Van De Carr, supra; Plymouth Coal Co. v Commonwealth of Pennsylvania, 232 U. S. 531, 545 (34 S. Ct. 359, 58 L. Ed. 713); Minnesota v. Probate Court, 309 U. S. 270, 277 (60 S. Ct. 523, 84 L. Ed. 744, 126 A. L. R. 530); Yakus v. United States, 321 U. S. 414, 434, 435 (64 S. Ct. 660, 88 L. Ed. 834.))

The provision empowering the board to revoke a license in case of unfair, unjust, inequitable or fraudulent practices of solicitation is neither vague nor uncertain and affords no possibility for the censorship of religious beliefs. In Agnew v. Daugherty, 189 Cal. 446, 448-449 (209 P. 34), this court upheld a similar provision in the Corporate Securities Act making the granting of a permit dependent on the commissioner's finding that the "proposed plan of business . . . . is not unfair, unjust or inequitable" and that the methods to be used to dispose of securities "are not such as, in his opinion, will work a fraud upon the purchaser thereof." (See, also, People v. Kuder, 93 Cal. App. 42 (269 P. 198, 630); People v. Stewart, 115 Cal. App. 681, 689 (2 P. (2d) 195); Yakus v. United States, supra, pp. 426-427 and cases there cited.)

It is contended that since the trial court found that plaintiff is engaged exclusively in religious activities, the [fol. 155] Charities and Relief Ordinance is rendered inapplicable to plaintiff's solicitations because of its provision that it "shall not be applicable to solicitations made solely for evangelical, missionary or religious purposes." There is no conflict in the evidence, however, as to what plaintiff's activities are. The issue presented is one of law, namely, whether the charitable purposes for which plaintiff solicits funds are exclusively religious purposes within the meaning of the ordinance. The trial court erroneously concluded that because plaintiff solicits funds for charitable purposes as part of its religious program its

solicitations are solely for religious purposes within the meaning of the ordinance. The ordinance specifically differentiates charitable from religious purposes. No person may solicit "any contribution for any charitable purpose" without complying with the requirements of the ordinance. The ordinance does not exempt solicitations for charitable purposes undertaken by religious organizations. Solicitations for charitable purposes, namely, for "philanthropic, social service, benevolent, patriotic" purposes, are subject to regulation whether or not they are undertaken by a religious organization. The intention to maintain a sharp differentiation between charitable and religious purposes is apparent in the provision that if a solicitation for religious purposes is likely to give the public the impression that funds are sought for charity, the board shall "investigate the matter of such solicitation [fol. 156] and give publicity to its findings thereon in such manner as it may deem best to advise the public of the facts of the case." The solicitation of funds to provide food, shelter, and clothing for those in distress is clearly for a charitable purpose and is therefore regulated by the ordinance. Plaintiff admittedly solicits funds for the purpose of giving relief to persons in distress. Since this purpose is charitable within the meaning of the ordinance, plaintiff's solicitations for that purpose are subject to the ordinance.

The judgment is reversed.

Gibson, C.J., Shenk, J., and Spence, J., concurred.

DISSENTING OPINION

CARTER, J.

I dissent. The majority opinion places the stamp of validity in toto upon a regulatory ordinance containing requirements so stringent that with their enforcement humble charities and good works must inevitably bow to

"The organized charity scrimped and iced
"In the name of a cautious statistical Christ."

Admittedly the intrusion into community existence of religious activities characteristic of the secular life brings into sharp focus the conflicting loyalties to church and state, the clash of religious freedom with social legislation, (See Conscience v. The State, by Prof. C. C. McCown, 32 Cal. L.

Rev. 1; Liberty under the Fourteenth Amendment by John [fol. 157] Raeburn Green, 43 Mich. L. Rev. 437; Bill of Rights Review of Am. Bar Ass'n., vol. 1, no. 2.)

Since 1940 the subject has been brought frequently before the United States Supreme Court by the sect known as Jehovah's-Witnesses, and that court has been alert to protect the free exercise of religion against abridgement. Its recent decisions, rendered at a time when the currents of world thought have been against democracy and toleration, have, as Professor McCown comments, made a substantial contribution to the defense of the liberties guaranteed by the Constitution, and the emphasis in several of the opinions upon the rights of "little people," of causes that are humble, needy, and without financial resources, is particularly notable. Quoting from the cited article, "The justices of the Supreme Court echo the language of social and religious protest from almost the beginning of history (2500 B.C.) in Mesopotamia, Egypt, and later in Palestine, down to the present day. Such language is familiar in the Hebrew prophets, the Psalms, and the Gospels. The obligation of government to protect the rights of the weak against those who possess political and economic power has been repeatedly proclaimed by prophets, but all too seldom recognized by the powers that be. Both democracy and religion demand the protection of the advocate of unpopular causes, for practically every reform, whether political, social, or religious, begins as a protest against vested interests and [fol. 158] majority opinions. . . . In dealing with Jehovah's Witnesses the Supreme Court has shown a sanity and a consideration for the ultimate issues involved which cannot but have some effect upon the cowardice of politicians and the impatience of crowds." (32 Cal. L. Rev. pp. 14, 30.) (see also Cantwell v. Connecticut, 310 U. S. 296 (60 S. Ct. 900, 84 L. Ed. 1213, 128 A.L.R. 1352); Largent v. Texas, 318 U.S. 418 (63 S. Ct. 667, 87 L. Ed. 873); Jamison v. Texas, 318 U.S. 413 (63 S. Ct. 669, 87 L. Ed. 869); Murdock v. Pennsylvania, 319 U.S. 105 (63 S Ct. 870, 891, 87 L. Ed. 1292, 146 A. L. R. 81); Martin v. Struthers, 319 U.S. 141 (63 S. Ct. 862, 882, 87 L. Ed. 1313); West Virginia v. Barnette, 319 U.S. 624 (63 S. Ct. 1178, 87 L. Ed. 1628, 147 A.L.R. 674).) In these decisions state legislation impinging upon a claimed religious freedom has been held valid only where there has been a strong showing of an essential need for regulation in the interest of the public

safety, health, and welfare, or for the maintenance of morals, peace, and order, protection against a clear and present danger, or the like.

During the world war, as also pointed out by Professor McCown, the rise of nationalism to the status of a religious cult and the contemporary sharpening of the Christian conscience revitalized and realigned issues that were supposedly settled. Social problems have arisen which are ancient, but also very modern, and they are made the more [fol. 159] difficult of solution by the traditions and social, political, religious, and legal philosophies with which they are surrounded. This country, having just emerged from a great conflict in which a guarantee of religious liberty to all peoples was a major aim, should be on guard against the subtle undermining, in the guise of municipal regulation, of these very rights which it has gone to such lengths to secure for others. For this reason the majority holding in the present case, with its reactionary trend, is particularly deplorable.

Obviously the commission of crime in the name of religion cannot be tolerated and the state must be safeguarded. The public are entitled to reasonable protection in community life, and fanaticism or misguided earnestness cannot be allowed to hold rein over the goodwill of the people. But beyond situations of emergency and present danger, the field of regulation should be extremely narrow. Thus in Schneider v. Irvington, 308 U.S. 147, 161 (60 S. Ct. 146, 84 L. Ed. 155), the United States Supreme Court, after stressing the importance of preventing the restriction of enjoyment of the constitutional liberties, said: "In every case, therefore, where legislative abridgment of the rights is asserted, the courts should be astute to examine the effect of the challenged legislation. Mere legislative preferences or beliefs respecting matters of public convenience may well support regulation directed at other personal activi- [fol. 160] ties, but be insufficient to justify such as diminishes the exercise of rights so vital to the maintenance of democratic institutions. And so, as cases arise, the delicate and difficult task falls upon the courts to weigh the circumstances and to appraise the substantiality of the reason advanced in support of the regulation of the free enjoyment of the rights."

Using this formula to test the legislation here under review, it appears that one of the main reasons advanced

in support of the regulation is its asserted necessity to protect the public from fraud. Resort to the penal statutes and usual methods of dealing with this evil is said to afford insufficient protection, in that warm hearted and generous citizens are especially vulnerable to solicitations made in the name of a religion or charity because of the nature of the appeal and their reluctance to turn a deaf ear to any cry of the poor and needy. Thus a delicate social problem is posed. Which is the more important, to give the public added protection, over that of the penal statutes, against annoyance, inconvenience, and possible fraud, or to preserve intact the cherished right of religious liberty? Should the state essay, at the expense of invasion of a constitutional right, to protect a citizen from his own inclination, or perchance his weakness, in responding to charitable solicitation without due inquiry into the worth of the sponsored cause? Is it not more in keeping with the American tra- [fol. 161] dition to instill in youth and preserve in the thought of the people that individual independence, strength of character, moral stamina, and perception which will enable them to judge personally the good or bad faith of a colporteur or solicitor and the merit of the cause he espouses?

That some fraud may escape detection is to be anticipated. This is more or less true in all walks of life despite volumes of protective legislation. But the diversion to wrongful channels of some part of the public contribution to charity is not a major catastrophe when weighed against the cost of protection effected only by carving a large slice from the bill of rights. Indeed it may be asked whether any community can afford to undertake a regulatory program which may largely deprive the public of the opportunity to hear and respond to pleas of other than organized and municipally approved charities, thus stifling the growth and character development gained by the exercise of pity, compassion, and generosity. Small are the sums contributed by the average community to charity when compared with the large amounts customarily spent for luxuries and entertainment. In one sense the benefit of the opportunity to give where the right hand knows not what the left hand is doing is of more intrinsic value than the actual raising of the money, for all are in need of the spiritual enrichment which comes of free will offering. There are few house- [fol. 162] wives who will not cheerfully give from their

larder to ten itinerant mendicants rather than run the risk of turning away hungry one man worthy of alms. And by the same reasoning there is less danger from solicitation for unworthy causes than from regulations so stringent that they may crush the humble workers, the "little people," destroy their good deeds, impinge upon their practice of religion, and form a breeding ground for intolerance, totalitarianism, or narow nationalism.

All of this has been given recognition in the decisions of the United States Supreme Court. In the Cantwell case it is said at pages 308 and 310, "But the people of this nation have ordained in the light of history, that, in spite of the probability of excesses and abuses, these liberties are, in the long view, essential to enlightened opinion and right conduct on the part of the citizens of a democracy. The essential characteristic of these liberties is, that under their shield many types of life, character, opinion, and belief can develop unmolested and unobstructed. Nowhere is this shield more necessary than in our own country for a people composed of many races and of many creeds. There are limits to the exercise of these liberties. The danger in these times from the coercive activities of those who in the delusion of racial or religious conceit would incite violence and breaches of the peace in order to deprive others of their equal right to the exercise of their liberties, [fol. 163] is emphasized by events familiar to all. These and other transgressions of those limits the states appropriately may punish. . . . Equally obvious is it that a state may not unduly suppress free communication of views, religious or other, under the guise of conserving desirable conditions. Here we have a situation analogous to a conviction under a statute sweeping in a great variety of conduct under a general and indefinite characterization, and leaving to the executive and judicial branches too wide a discretion in its application."

Again it is said in the Schneider case at page 164: "Conceding that fraudulent appeals may be made in the name of charity and religion, we hold a municipality cannot, for this reason, require all who wish to disseminate ideas to present them first to police authorities for their consideration and approval, with a discretion in the police to say some ideas may, while others may not, be carried to the homes of citizens; some persons may, while others may not disseminate information from house to house. Frauds may be de-

nounced as offenses and punished by law. Trespasses may similarly be forbidden. If it is said that these means are less efficient and convenient than bestowal of power on police authorities to decide what information may be disseminated from house to house, and who may impart the information, the answer is that considerations of this sort do not empower a municipality to abridge freedom of speech [fol. 164] and press." The same is true with respect to abridgement of the right of religious freedom. Many recent pronouncements of similar tenor might be added to those above cited.

Before proceeding to a more detailed review of the legislation here involved, it may be stated that plaintiff is an incorporated religious organization and that it operates a mission and store, the latter being called its industrial department. Among its religious activities are the holding of religious services at its mission by a minister ordained by it, church services and missionary work, giving away the New Testament and religious tracts. It conducts its operations in substantially the following manner: Financial solicitors, working from its headquarters, endeavor to obtain money contributions. These contributions are delivered to the treasurer of the organization and are used for carrying on its religious activities. The present treasurer has been a solicitor for plaintiff for many years and retains 30 per cent of the funds collected. About 50 per cent of the funds are used for salaries and expenses. The minister's sole compensation is derived from contributions and it is said to cover no more than his expenses. Plaintiff also gives assistance in property and money to those in need. In operating its store or industrial department it acquires secondhand property, most of which is called salvage, and sold to the public. The remainder is disposed of as junk. The truck drivers who collect the property receive [fol. 165] a percentage of the salvage, but they do not participate in the proceeds derived from operation of the store. They also retain all but 10 per cent of the proceeds of the sale of the junk. Solicitors of salvage work from trucks and receive an average of 50 cents an hour. The store uses its funds for expenses of operation and occasionally does charity work. The balance is delivered to plaintiff's treasurer. None of the salvage solicitors distribute plaintiff's religious literature.

Defendant department claims that plaintiff, in operating its store, is a "promoter" as defined in the city ordinance, and demands that it obtain a license authorizing solicitations for the store. No demand is made in regard to religious activities, but a religious organization is required to file a notice of intention and obtain a permit to solicit funds for charitable purposes. Apparently defendant department determines whether an organization is soliciting for charity or for religion and has adopted a rule that 50 per cent of the amount collected must go for charitable purposes.

The trial court found on substantial evidence that plaintiff is a "duly constituted and functioning religious organization, engaged exclusively in the promulgation, by literature and word of mouth, of its religious beliefs, by and through its auxiliaries, and in the procuring of donations in the form of money and articles of value in the [fol. 166] prosecution and furtherance of its religious activities," and that if plaintiff is required to obtain a permit and pay a license fee as a condition of solicitation and receipt of donations "to be used in the furtherance of said religious activities," this "will amount to a prior restraint on the exercise of (its) religious activities within the meaning of the Constitution of the United States . . . an infringement upon the free exercise of . . . religious liberty as protected by the Constitution."

These findings require a consideration first of the question whether plaintiff's operations come in whole or in part within the exemption provision of the ordinance. Solicitations upon premises owned or occupied by the association in whose behalf the solicitation is made, and the soliciting of funds from members of the association are not subject to the promoter, solicitor, and certain other regulatory provisions of the ordinance. Exemption is also extended to "solicitations made *solely* for evangelical, missionary or religious purposes," but with the proviso that if such solicitations are conducted in a manner which, in the opinion of the board, may give those solicited the impression that the purpose of the solicitation is in whole or in part charitable, the board may investigate the matter and give such publicity to its findings as it deems best to advise the public of the facts.

In considering the applicability of the exemption to [fol. 167] plaintiff's activities it would at first blush appear,

and the trial court concluded, that inasmuch as all of plaintiff's operations, including its charitable work, are conducted for and as part and parcel of and incident to its religious purpose, all must come within the exemption. However, a review of the ordinance in its entirety indicates that by use of the word "solely" in the exemption clause, it was intended to differentiate between solicitations for promulgation and support of the religion or church itself, and solicitations for charitable work performed as part of the religious purpose, with exemption accorded to the former but not to the latter. If the exemption is thus unavailable where the religious organization solicits for charity in connection with the promulgation and exercise of its doctrines of religion (and this seems to be the interpretation placed upon the ordinance by the rules and regulations of the board and by the officers in enforcing it), then the validity of the regulatory provisions must be tested by the limitations, if any, which may be imposed upon the exercise of the right of religious liberty.

To a degree the majority opinion recognizes this fact but it implies, without straightway so declaring, that charitable undertakings are separable from the religious purpose inducing them, and that by severance they may be removed to the realm of secular affairs and there be subjected to [fol. 168] governmental regulation without intrusion of the bothersome problem of preservation of the constitutional right of religious liberty. This implication is inherent in the discussion which starts with the declaration (p. 12): "Many activities prompted by religious motives can hardly be differentiated from secular activities. If the applicability of government regulation turned on the religious motivation of activities, plausible motivations would multiply and in the end vitiate any regulation," and proceeds to state (pp. 14-15): "Activities characteristic of the secular life of the community may properly be a concern of the community even though they are carried on by a religious organization. . . . Religious organizations engage in various activities such as founding colonies, operating libraries, schools, wineries, hospitals, farms, industrial and other commercial enterprises. Conceivably they may engage in virtually any worldly activity, but it does not follow that they may do so as specially privileged groups, free of the regulations that others must observe. . . . There is no doubt that plaintiff, like many religious organizations,

regards the practice of charity as a religious duty. It is not exclusively a religious activity, however; many charitable activities spring from sources in the everyday life of the community unrelated to religion. The state itself has an active responsbility for the welfare of the poor, the aged, the sick, the unemployed, and the orphaned. There [fol. 169] is a public interest in regulating the solicitation of funds for these purposes. . . ."

In the above discussion the majority opinion quotes copiously from Prince v. Massachusetts, 321 U. S. 158 (64 S. Ct. 438, 88 L. Ed. 645), a case which has been criticized as being out of line with other recent United States Supreme Court decisions. (See Liberty Under the Fourteenth Amendment, supra, at p. 446.)

It is true that religious liberty "embraces two concepts —freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be" (Cantwell v. Connecticut, supra, 310 U. S. 296, 303), and that where the religious organization conducts acitivities characteristic of the secular life of the community, they may be subject to proper regulation under the police power. But, as already pointed out, this power of regulation is not unrestricted and it can only be enforced with due regard to preservation of constitutional rights. Both freedom of religious thought and freedom of religious action come within the protection of the bill of rights. This freedom cannot be whittled away by carving out segments of religious activities and relegating them to the realm of secular affairs. If that were permitted, the right of action for a religious purpose could eventually be destroyed by the gradual severance and classification as secular of every activity undertaken to promote the religious purpose.

[fol. 170] Aside from the pronouncements found in the late federal decisions, it has long been the law of this state that a charity conducted as part of a religious practice is inseparable from the religion itself. The utter impossibility of any severance is made plain in the case of Application of Dart (1916), 172 Cal. 47 (155 P. 63, Ann. Cas. 1917D 1127, L. R. A. 1916D 905), where in speaking of the Jewish and Christian religions is is said (pp. 55-56): "In both of these religions charity is the central word. It is enjoined, not as a good thing, or a wise thing, or as a kindly thing only, *but as a fundamental part of the religion itself.* Says the Jewish faith: 'On three things the world is stayed; on

the Thorah (the law) and on worship and on the bestowal of kindness.' 'Now the end of the commandment is charity out of a pure heart,' says Paul to Timothy. 'Charity is the scope of all God's commands,' preaches Chrysostom. 'All perfection of the Christian life is to be attained according to charity,' declares Thomas Aquinas. Does it need more, does it need so much, to show that in these religions *the bestowal of charity, the devotion of life to charity, are a part of the religion itself?* And does it demand discussion to establish so plain a truth as that touching religion there is a doubtful zone which legislation should be most reluctant to enter? The founders of the nation recognized it when they placed the great guaranty of religious liberty in the constitution of a free people, and it is for every court to see that liberty is not encroached upon and that freedom [fol. 171] gnawed and impaired by any experimental legislation however well meant. So when legislation does enter that uncertain domain, the fact that it is there must bring it to condemnation. In accordance with the dictate of the Constitution itself the doubt will be resolved in favor of religious liberty. And it will be found better in the long run that the free exercise of religion be preserved in its integrity, better for the nation, better for charity itself which owes so much to religion, even if the efficiency of religious charities be not up to the standard of perfection set by the Municipal Charities Commission. If, under that standard, seventy-five cents of every dollar would go to the objects of charity, while under the less efficient methods in vogue but fifty cents of each dollar actually reaches the beneficiaries, it is not to be forgotten that there will be many millions fewer of these dollars to be distributed in charity if the activities of the religious are hampered, thwarted, and stayed."

The above comment is extremely apropos. If, under defendants' interpretation and enforcement of the ordinance, plaintiff is to be denied the benefit of the exemption clause insofar as its charitable activities are concerned, then the regulatory provisions of the ordinance must be subjected to close scrutiny in order to determine whether they infringe the guarantee of religious liberty. Although concededly acts of charity apart from religious motivation, [fol. 172] might be performed by the state, or by a professed atheist or nonreligionist, nevertheless the evidence here establishes beyond contradiction that plaintiff's charities

are an integral part of and inseparable from its religious purpose. From common knowledge and in challenge to the severance theory of the majority opinion, it must be said that acts of charity which do not stem, consciously or unconsciously, from early religious training or Christian inheritance are sparse. It is a matter of common historical knowledge that public charities and benevolent associations for the gratuitous relief of every species of distress, are peculiar to christianity; no other system of civil or religious policy has originated them; they form its highest praise and characteristic feature. The Apostle Paul in chapter XIII of his first Epistle to the Corinthians epitomized his concept of the essential intangibles of Christianity and concluded with the immortal verse: "And now abideth faith, hope, charity, these three; *but the greatest of these is charity.*" Thus charity is the heart and basic principle of plaintiff's religion. To destroy that heart leaves the body lifeless. Yet the majority opinion does just that. It declares charity to be a secular affair in spite of the above showing to the contrary and thus subjects the exercise by plaintiff of its religion to unrestricted regulation and ultimate destruction.

Moreover, the anomalous result of the majority opinion is [fol. 173] that a religious organization may use its own funds for a charitable purpose without hindrance, but if it solicits directly for the charity, the solicitation is subject to the cumbersome ordinance provisions hereinafter discussed. This makes the matter merely one of the form of the solicitation. To avoid regulation and gain the protection of the exemption, the solicitor only needs to make his plea for funds in the name of his church. The church then receives the donations and uses them for any purpose it may choose, good or bad, charitable or uncharitable, and it is not reached by the ordinance provisions.

Proceeding now to test the regulatory provisions of the ordinance as against the claimed infringement of the constitutional guarantee of religious liberty, it will be noted that the majority opinion incorporates the provisions by marginal reference and then, upon a discussion replete with generalizations, none of which standing alone can be said to contain an incorrect statement of the law, it announces the broad conclusion that, "We find nothing unduly burdensome or unreasonable in any of these provisions" (p. 15); "In our opinion the classification effected by this ordinance

is reasonable and the standards provided are adequate" (pp. 7-8).

Were each regulation discussed in detail and given separate consideration, it is doubtful that even the author of the opinion would say that none is unduly onerous. Section [fol. 174] 44.05 imposes upon any person who wishes to solicit "any contribution for any charitable purpose," a duty of filing with the department at least ten days prior to the commencement of the work, a written notice of intention containing "complete information" upon eleven comprehensive phases of the undertaking. But a glance at this section shows that the much maligned income tax forms issued by the federal government are no more complex and demanding than is this notice of intention in its requirements of itemized data. One wonders where the average almsman or solicitor is to acquire the educational background to enable him to supply such statistics. Must the opportunity for exercising one's religion by doing charitable work be limited to those who are apt in reading, writing and arithmetic?

The solicitor must show (a) "The purpose of the solicitation and use of the contribution to be solicited"; he must make (b) "A specific statement, supported by reasons and, if available, figures, showing the need for the contribution proposed to be solicited"; he must show (c) "The character of such solicitation and how it will be made or conducted." How can these requirements be fitted into the program of the itinerant religionist who solicits as he wanders, taking with the one hand to give freely with the other, reserving for himself only bare necessities? What freedom is left for the missionary and walking preacher who play so colorful a part on the American scene, soliciting their charities, [fol. 175] spreading their doctrines, without preconceived plan and as each feels himself daily to be guided, and without compiling statistics or publishing abroad the good works.

Further requirements of the notice indicate that its enforcement will doubtless effect the disappearance of all but organized institutions, for the applicant must also show the following: "(d) The expenses of the solicitation, including salaries and other items, if any, regardless of from what funds such expenses are payable; (e) What portion of the contributions collected as a result of the solicitation will remain available for application to the specific pur-

poses declared in the Notice of Intention as the object of the solicitation; (f) A specific statement of all contributions collected or received by such person or association within the calendar year immediately preceding the filing of such Notice of Intention. The expenditure or use made of such contributions, together with the names and addresses of all persons or associations receiving salaries, wages, compensation, commissions or emoluments from such contributions, and the respective amounts thereof; (g) The names and addresses of the officers and directors of any such association for which the solicitation is proposed to be made; (h) A copy of the resolution, if any, of any such association authorizing such solicitation certified as a true and correct copy of the original of such resolution by the officer of such association having charge of the records [fol. 176] thereof; (i) A statement that the signers of such Notice have read and are familiar with the provisions of this Article and will require all solicitors engaged in such solicitation to read and be familiar with all sections of this Article prior to making any such solicitation." This last quoted provision expressly bars all who have not attained a sufficient degree of learning to abide by its terms.

As a whole the involved demands are a far cry from the simple regulation endorsed in the Cantwell case, to wit: that "Without doubt a state may protect its citizens from fraudulent solicitation by requiring a stranger in the community, before permitting him publicly to solicit funds for any purpose, to establish his identity and his authority to act for the cause which he purports to represent. The state is likewise free to regulate the time and manner of solicitation generally, in the interest of public safety, peace, comfort or convenience." (310 U. S. at p. 306.) A regulation such as that described is not unreasonable and affords a sufficient basis for the opening of an investigation in the event charges of fraud should be lodged against a solicitor. (Murdock v. Pennsylvania, 319 U. S. 105 (63 S. Ct. 870, 891, 87 L. Ed. 1292, 146 A. L. R. 81).) Probably no sincere solicitor would protest having to register, carry an identification card, and conduct his activities in a seemly manner and at reasonable hours. But he should be immune from any more onerous legislative interference, even though [fol. 177] to some, his efforts might appear to be misguided.

The ordinance contains further requirements even more burdensome than those above set forth. With the notice of intention there must be filed a statement of any agreement between solicitors and the organization for which they are soliciting. (#44.06.) Whenever in the opinion of the Board of Social Service Commissioners the notice of intention does not contain sufficient information for the public concerning the facts required to be therein stated, there must be filed within 48 hours such additional information as the board requests. (#44.06). The department has power to investigate the statements in the notice of intention and the methods and manner of solicitation, to inspect records of the association for which the solicitation is made, and to issue to solicitors information cards at four cents a card. These information cards are in effect permits to solicit and they must set forth the facts stated in the notice of intention and such additional information as in the opinion of the board will be of assistance to the public in determining the nature and worthiness of the purpose for which the solicitation is made. (#44.03.) The board may recall information cards when they receive additional information which renders incorrect any statement thereon and amend them. (#44.02.) No person shall employ any misstatement, deception, or fraud in connection with the solicitation (#44.04), or use a fictitious name (#44.07.) [fol. 178] A person may not solicit for a charitable association unless it maintains records of receipts and disbursements, (#44.08.) Solicitors must have the written authorization of the organizations they represent. (##44.10, 44.11.) They must exhibit their information card to the prospective donee when soliicting (#44.12), and file a complete report of their activities with the board (#44.14). They must give receipts to donees stating various facts (#44.15). Violation of the ordinance is made punishable as a crime.

In support of its declaration of the validity of these provisions, the majority opinion states that they confer upon the department no authority to withhold information cards when the requirements are met, and it cannot be assumed that the department will abuse its authority in order to withhold them. This is true, but is also apparent that a procedure so complex and so costly in time and effort will, so far as many solicitors are concerned, be prohibitive. It is said in the Cantwell case (310 U. S. 296, 305) that "The general regulation, in the public interest, of solici-

tation, which does not involve any religious test and does not unreasonably obstruct or delay the collection of funds, is not open to any constitutional objection, even though the collection be for a religious purpose." Assuming that the provisions above quoted do not involve any religious test, nevertheless they are so demanding as not only to open the door to unreasonable delay and abuse of discre- [fol. 179] tion, but also as possibly to bar certain classes of solicitors found among the "little people." Obviously, they do unreasonably obstruct and delay the collection of funds.

Still more restrictive provisions of the ordinance apply to so-called "promoters," who are defined as "any person who for pecuniary compensation or consideration received, or to be received, solicits or is engaged in the business of or holds himself out to the public as engaged in the business of soliciting contributions for or on behalf of any other person or any charitable association, corporation, or institution, or conducts, manages, or carries on . . . or is engaged in the business of or holds himself out as engaged in the business of conducting, managing or carrying on any drive or campaign for any such purpose; provided, however, that pecuniary compensation or consideration as used herein, shall include, but shall not be limited to, participation on a percentage basis in any fund solicited, or raised, for or on behalf of any other person, firm, association or corporation; provided, further, that no person who is a bona fide paid officer or employee of a social service agency endorsed by the Board of Social Service Commissioners, shall be considered a promoter within the meaning of this article." (#44.01.)

Section 44.19, subdivision 1, provides that "No promoter shall in any manner whatsoever, solicit within the City of Los Angeles any contribution for any actual or purported [fol. 180] charitable use, purpose, association, corporation or institution without license from the Board so to do."

Subdivision 2, entitled "Application," states that "To obtain such license, such promoter shall make and file with the Board an application therefor in writing. In such application, the applicant shall set forth, in addition to such information as may be required by the Board: (a) The name and address of the applicant. . . . (b) A succinct statement of facts showing that the applicant . . . is of good character and reputation. . . . (c)

The general plan, character and method in or by which the applicant proposes to conduct its or his business as a promoter."

Subdivision 3 is entitled "Bond," and states: "At the time of so filing with the Board an application for such license the applicant shall file and thereafter maintain with the Board a good and sufficient bond in the aggregate sum of . . . $2,000 running to the City of Los Angeles for the use and benefit of interested persons and parties. . . . Said bond shall be conditioned upon the strict compliance, by the Prinicipal, with the provisions of this Article and the payment of any direct pecuniary loss sustained, through any act of grand or petty theft on the part of the Principal, by any donor or by any person on whose behalf the funds or personal property were solicited or received by the Principal. . . ."

Subdivision 5, entitled "Investigation," provides that [fol. 181] "The Board shall examine such application and shall make such further investigation of the applicant and its or his affairs as the Board shall deem advisable. If from such examination the Board shall be satisfied: (a) That the applicant is of good character and reputation. . . . (b) That applicant has sufficient financial responsibility to carry out the obligations incident to any solicitation such applicant may make within the City of Los Angeles as such promoter and that all of the statements made in such application are and each of them is true and that . . . applicant . . . has (not) violated any of the provisions of this Article or has (not) engaged in any fraudulent transaction or enterprise, and that the applicant intends to conduct its business fairly and honestly, the Board shall issue to the applicant a license to solicit as a promoter within the City of Los Angeles, contributions. Otherwise, the Board shall deny the application and refuse to issue a license, and shall notify the applicant of the decision of the Board. . . ."

Under the heading "Revocation," subdivision 6 states that "All licenses issued hereunder shall be subject to the condition that the applicant thereafter shall cease and desist from acting as a promoter within said City of Los Angeles when ordered so to do by the Board if the Board finds after a hearing . . . that any act or omission of such promoter . . . in making any solicitation or

in the conduct of the business of promoter within the City [fol. 182] of Los Angeles is unfair, unjust, inequitable or fraudulent. The Board must suspend or revoke any such license if, after hearing upon notice, the Board shall find the existence of any of the grounds hereinabove enumerated for the denial of an application for a promoter's license; provided, however, that such suspension or revocation shall be discretionary with the Board if the only ground for such revocation is such that it does not affect the licensee's honesty and integrity, or his ability properly to perform his duties as a promoter."

Subdivision 7 deals with "Termination" of licenses at the close of each fiscal year, and subdivision 8 with "Funds." The latter subdivision provides that "No promoter shall commingle any contribution with the promoter's own funds or property, or fail at any time to maintain and keep all contributions separate and apart from the promoter's own funds or property. . . . (a) It shall be unlawful for any promoter to cause or permit any person for pecuniary compensation or consideration received or to be received by such person to solicit or receive on his behalf or at his instigation, under his direction or control or in his employment, any contribution unless such person shall be registered as a solicitor by the Board. (b) No person shall be so registered as a solicitor unless he shall first appear personally before the Board and furnish satisfactory proof that he is a person of good moral character, that his reputation for honesty is good, and unless he first file with the Board and thereafter [fol. 183] maintain a bond satisfactory to the Board in the sum of . . . $500.00, conditioned for the payment of any direct pecuniary loss which may be sustained by the promoter, by any donee, or by any person on whose behalf any contribution was solicited or received, through any act of grand or petty theft, committed by such person. (c) The provisions of paragraphs b, c, d, and e of subsection 3, above, shall apply to bonds filed pursuant to this subsection. (d) The Board shall collect a fee of . . . $1.00 for each such registration. . . ."

The comment which has been made concerning the unreasonableness of the ordinance provisions relating to solicitors applies with double force to these "promoter" provisions, and they are also subject to additional criticism. [fol. 184] From the definition of a "promoter", as hereto-

fore quoted (#44.01, supra), it appears that the term is not confined to business solicitors, such as employees of a promotion agency handling fund raising campaigns, but includes any person who for pecuniary compensation solicits for another. Many solicitors for charity are indigent religionists. As an integral part of the exercise of their religious right they solicit funds in support of their cause and the charitable activities incident to it, and of necessity they retain some portion of the money collected in order that they themselves may be clothed and fed. To impose upon this class the burden of posting a $2,000 bond, of paying a license fee, and of showing sufficient financial responsibility to carry out the obligations incident to their solicitation is to seriously impede, if not prohibit, their undertakings at the outset. A required qualification of financial standing sufficient to enable such an applicant to post a $2,000 bond will neither insure honesty nor create a deterrent against fraud. In many cults and religions it is traditional that poverty and saintliness shall walk hand in hand. Many creeds view the possession of property and assets, or of more money than necessary for bare essentials, as a manifestation of sins of worldliness. Yet history shows that some of the finest deeds of charity and most unselfed works known to man have been accomplished by adherents of these views. It is [fol. 185] thus a dangerous legislation which would impede the charitable impulses and hamper the undertakings of all but the financially able—which would give to men of property but deny to the poor the right equally possessed by both to develop and carry out the tenets of their creed.

The fee of $25 may not seem large but when it is combined with the expense and difficulty of obtaining a bond (if indeed such could be obtained by an indigent religionist even if the premium were paid for him), and establishing the vague condition of "financial responsibility," it involves cumulative burdens too heavy to be borne. In seeking to justify its declaration of the reasonableness of these provisions, the majority opinion states that the filing of a bond is "a common requirement in the regulation of occupations or activities involving the handling of entrusted funds," and that "The license fee is a reasonable one, covering the expenses of investigations and administration" (p. 20). This latter statement may have been inspired by the fact that the late federal decisions speak of the distinction between a li-

cense fee solely to defray the costs of enforcement of a regulatory statute and one for revenue purposes, condemning only the latter. But here, even if the regulatory provisions of the ordinance were otherwise reasonable as applied to religionists and justified the imposition of a fee sufficient to meet the costs of administration, there is no indication whatsoever that these costs would amount to $25 [fol. 186] for the handling of each application or that that sum was fixed in contemplation of reimbursement for expenses.

The following excerpt from Murdock v. Pennsylvania, 319 U. S. 105, pp. 111-113 (63 S. Ct. 870, 891, 87 L. Ed. 1292, 146 A. L. R. 81), is pertinent: "It is plain that a religious organization needs funds to remain a going concern . . . Freedom of speech, freedom of the press, freedom of religion are available to all, not merely to those who can pay their own way. . . . Those who can tax the exercise of this religious practice can make its exercise so costly as to deprive it of the resources necessary for its maintenance. Those who can tax the privilege of engaging in this form of missionary evangelism can close its doors to all those who do not have a full purse. Spreading religious beliefs in this ancient and honorable manner would thus be denied the needy. Those who can deprive religious groups of their colporteurs can take from them a part of the vital power of the press which has survived from the Reformation. . . . In all of these cases the issuance of the permit or license is dependent on the payment of a license tax. And the license tax is fixed in amount and unrelated to the scope of the activities of petitioners or to their realized revenues. It is not a nominal fee imposed as a regulatory measure to defray the expenses of policing the activities in question. It is in no way apportioned. It is a flat license tax levied and col- [fol. 187] lected as a condition to the pursuit of activities whose enjoyment is guaranteed by the First Amendment. Accordingly, it restrains in advance those constitutional liberties of press and religion and inevitably tends to suppress their exercise. . . . So, it may not be said that proof is lacking that these license taxes either separately or cumulatively have restricted or are likely to restrict petitioners' religious activities. On their face they are a restriction of the free exercise of those freedoms which are protected by the First Amendment. . . . Itinerant evangelists moving throughout a state or from state to state

would feel immediately the cumulative effect of such ordinances as they become fashionable. The way of the religious dissenter has long been hard. But if the formula of this type of ordinance is approved, a new device for the supression of religious minorities will have been found. This method of disseminating religious beliefs can be crushed and closed out by the sheer weight of the toll or tribute which is exacted town by town, village by village. The spread of religious ideas through personal visitations by the literature ministry of numerous religious groups would be stopped."

It will further be noted that the provision defining "promoters" as heretofore quoted (#44.01, supra), includes a special exemption running in favor of bona fide paid officers and employees of social service agencies endorsed by the board. The conditions which a social service agency [fol. 188] must meet to secure endorsement are set forth in a detailed separate ordinance, the relevant portions of which are incorporated in the majority opinion by marginal reference. One condition is: "(h) That the officers and employees of such corporation or association are persons of good moral character and reputation and that the corporation or association has exercised reasonable care in selecting persons of good moral character and reasonable experience as solicitors for its funds."

Apparently no bonding or license requirement is imposed upon these solicitor-employees, or in their behalf upon the organization they represent. Thus, the solicitors for the organized charity hold a great primary advantage over the unorganized worker, with no sound reason for the discrimination. Graft and corruption can flourish, and fraud can emanate from high places as well as low, and through organization these evils are sometimes hidden and the more securely entrenched. Also the percentage of contribution retained to meet the expenses and recompense the employees of charitable institutions is apt to be higher than that retained by unorganized workers or sincere and humble religionists who sacrifice all in the practice of their religion. Abuses and breaches of trust do occur but who can say that the hazard is greater in unorganized classes of workers, whose illicit gains are probably small, compared with what is lost when a large institution becomes permeated with corruption.

[fol. 189] Vital need exists for the individual as well as for the organized worker in both charitable undertakings and general benefits derived from the spreading of religious doctrines. There are many dark places where the light of organized charity does not penetrate—many needy whom it does not reach. To these people the tender ministrations of sincere and unfettered religionists bring succor and salvation. The unreasonable curtailment of this activity merely because some are addicted to fraudulent and deceitful practices in the name of charity, is as unthinkable as would be the dissolution of established institutions merely because dishonesty and corruption have at times been uncovered in their administration. The public as a whole cannot be freed from the entire power of decision as to the worth of the cause for which they are solicited or their inclination to contribute. If the constitutional guarantees are to be upheld, then the public must expect to bear some portion of the burden of seeing that their gifts are made only to worthy and honestly administered causes.

Another objectionable provision of the ordinance is that which requires the promoter to furnish "a succinct statement of facts showing that the applicant . . . is of good character and reputation." Those who contribute to charity are not so much concerned with the "reputation" of the solicitor as they are with the intended use to which the donations are to be put. A most wicked man of public [fol. 190] ill repute may espouse a very worthy cause or do a very good deed. Religionists and reformers are often called from the gutter whence they return to make expiation for their wrong doings by trying to save others from a like fate and to aid the redemption of those who may already have strayed. Forceful and effective work has been done by the reformed, turned reformer, and many of these people labor on without affiliation with any recognized institution and without financial help other than that gleaned through solicitation.

Hence, it would seem that if any statement is to be demanded in connection with a reasonable requirement for registration and identification it should embrace no more than an averment of present honesty and sincerity in the disbursement of money and property for the purpose for which they are solicited. Reputation is not an issue.

The requirement of section 44.19 that the officials may make an investigation and if "satisfied" that the applicant is of "good character and reputation" they may issue a license, places upon the applicant the burden of establishing this requirement as a condition precedent to the exercise of his right of religious liberty. Such a requirement is not a sufficiently fixed and definite standard to safeguard the free exercise of the constitutional right here involved. In the exercise of their power the officials might conclude that an applicant does not qualify merely because of their [fol. 191] opinion concerning his particular religious belief and creed. The way of the dissenter is usually hard and by reason of his views his reputation in the eyes of a large group, or a majority, may be far from good and his character at least questionable if not downright immoral. What fair qualification to the right of religious liberty can be conceived which limits its exercise to those who have good reputation and character, and denies it to those who have not?

It is said in Murdock v. Pennsylvania, supra (319 U. S. 105, 116): "Plainly a community may not suppress, or the state tax, the dissemination of views because they are unpopular, annoying or distasteful. If that device were ever sanctioned, there would have been forged a ready instrument for the suppression of the faith which any minority cherishes but which does not happen to be in favor. That would be a complete repudiation . . . of the Bill of Rights." And again in Cantwell v. Connecticut, supra, (310 U. S. 296, 310): "In the realm of religious faith, and in that of political belief, sharp differences arise. In both fields the tenets of one man may seem the rankest error to his neighbor. To persuade others to his own point of view, the pleader, as we know, at times, resorts to exaggeration, to vilification of men who have been, or are, prominent in church or state, and even to false statement. But the people of this nation have ordained in the light of history, that, in spite of the probability of excesses and [fol. 192] abuses, these liberties are, in the long view, essential to enlightened opinion and right conduct on the part of the citizens of a democracy."

Subdivision 6 of section 44.19 of the ordinance is also subject to criticism. It authorizes the revocation of the license where the licensee, in making the solicitation, is un-

fair, unjust, inequitable, or fraudulent. These grounds, except the one last stated, are vague and uncertain and may well result in the same religious censorship arising from a determination of good character and reputation.

Subdivision 8 of the section, dealing with the qualifications of solicitors for promoters, is subject to the same objections as the rest of the section. The only difference is the amount of the fee and the size of the bond. It requires a "good moral character," and a reputation for honesty that is good.

It is not an obstacle to plaintiff's attack on section 44.19 that it has not sought a license or that if the public officials act arbitrarily their action is subject to jurisdictional review. The section on its face operates as a prior censorship on the free exercise of religious liberty. (Cantwell v. Connecticut, supra.)

There is another ordinance which concerns the regulation of pawnbrokers, secondhand dealers, and junk dealers (Los Angeles Municipal Code, #24,01). Although its provisions must be considered in relation to the operation [fol. 193] of the store or so-called industrial department of plaintiff, the subject need not be developed here, for from the evidence it is clear that the store partakes of enough of the character of a commercial enterprise to justify the restrictions imposed. In the main I can concur in the conclusions (although not the reasoning upon which they are based), expressed in the majority opinion with respect to this phase of the case. The store is not conducted as a profit making institution but it is in the business of selling used property. The operations of junk dealers and pawnbrokers have long been recognized as a distinct class of business subject to regulation under the police power in order to facilitate the recovery of stolen property and the preservation of health. (See 43 C. J. pp. 389-390; 43 Id. 410-411; 16 C. J. S., Constitutional Law, #189.)

It is not contended that the regulatory provisions of section 24.01 are invalid if considered apart from the question of the guarantee of religious liberty. Even assuming that the section must be viewed in the light of the right of free exercise of religion, there seems to be nothing arbitrary or unreasonable in its regulatory requirements. The measure is patently a police regulation and the specified fee is not a tax for revenue. That fee does not have combined with it the other financial burdens imposed under the

ordinance dealing with promoters and hence it is distin-
[fol. 194] guishable. Morever, the operation of the store has most of the aspects of an ordinary commercial enterprise.

Such ordinance (Los Angeles Municipal Code, #24.01) provides that persons who are to engage in the regulated business must annually apply for and receive a written permit. Under subsection (c), entitled "Requisites of Permits," it specifies the following requirements or "standards": (1) The original application must state "by street and number the place where such business is proposed to be conducted" or, in the case of junk collectors having no fixed place of business, "their residence by street number." The application "shall be signed by the applicant and shall contain his residence address." (2) The payment in advance of an annual fee of $25 ($50, if jewelry, watches "or similar secondhand merchandise" is to be dealt in). (3) Upon receipt of the application "the Board shall cause to be investigated the business of the applicant and location at which applicant proposes to engage in business as specified in said application. Thereafter the Board may issue a permit . . . for the remaining portion of the current year." (4) Persons operating under the ordinance must "secure an annual renewal of such permit commencing January 1st of the succeeding year." (5) Persons holding "an ordinary" permit must apply for and secure a "special permit," "in the manner provided . . . for securing ordinary permits," before dealing in "secondhand jewelry, precious
[fol. 195] stones, precious metals, . . . watches or other similar secondhand merchandise.

Further, regulations or "standards" set by the ordinance include the following: "The Board shall not grant any permit . . . to persons who fail, refuse or neglect to comply with the laws and ordinances relating to and regulating the business for which such permit is sought"; "If persons holding permits . . . shall violate any of the provisions of this Section (the Municipal Code section setting forth the ordinance in question) or any provision of any other ordinance, or any law relating to or regulating any such business, or shall conduct or carry on such business in an unlawful manner, the Board . . . shall revoke such permit," but only upon following the procedure "in the manner provided in Section 22.02 of this Code" (which procedure is not questioned); permit holders "shall file reports, on forms

provided by the Chief of Police, listing the merchandise received or purchased on the preceding day, the hour of such receipt or purchase, the "true name and address of the party making the sale, delivery or pledge as nearly as the same is known to or can be ascertained by such person together with a description of such party," the number of the pawn ticket issued, if a pledge is involved, and the amount loaned, and a description of each article pledged, received or purchased. The permit holder is also required to keep "a complete record of all goods . . . pledged to [fol. 196] or purchased or received by him" which record "shall be open at all times during business hours to the inspection of any member of the Police Department."

The mentioned provisions (and the same is true of the further provisions not herein epitomized) are not unreasonable or uncertain. Substantially nothing more is required for an original permit than the payment of the moderate fee and the filing of the written and signed application giving the data as to the location of the proposed business and the applicant's name and residence address. The requirements for compliance with law and the keeping and filing of reports, etc., after commencing business, are reasonably related to the nature of the business and the purposes of the regulations. These latter provisions furnish a proper and exclusive standard for guidance of the board in passing on applications for renewals of permits or proceedings to revoke permits. The very moderate requirements for original issuance of permits, hereinabove set forth, leave little if anything, beyond the suitability of the proposed location, to the discretion of the board. This ordinance fully meets the constitutional requirements that regulatory laws of this type establish reasonable standards for the guidance of the permit-issuing board.

Defendants contend that injunctive relief is not available to plaintiff, and that there is no showing of irreparable injury. Generally, public officers may be enjoined from [fol. 197] enforcing an unconstitutional statute, and section 526(4) of the Code of Civil Procedure and section 3424(4) of the Civil Code have no application to such situations. (Brock v. Superior Court, 12 Cal. 2d 605 (86 P. 2d 805); Bueneman v. City of Santa Barbara, 8 Cal. 2d 405 (65 P. 2d 884, 109 A. L. R. 895).) Where a criminal statute or ordinance causes irreparable damage to property rights, the injured party may attack its constitutionality in an action

to enjoin its enforcement. (See Jones v. City of Los Angeles, 211 Cal. 304 (295 P. 14); Sullivan v. San Francisco Gas Etc. Co., 148 Cal. 368 (83 P. 156, 7 Ann. Cas. 574, 3 L. R. A. N. S. 401); Los Angeles T. Ins. Co. v. Los Angeles, 52 Cal. App. 152, 156 (198 P. 1001); San Diego T. Assn. v. East San Diego, 186 Cal. 252 (200 P. 393, 17 A. L. R. 513); and Abbey Land etc. Co. v. San Mateo, 167 Cal. 434, 438 (139 P. 1068, Ann. Cas. 1915C 804, 52 L. R. A. N. S. 508).)

An interference with the solicitation by plaintiff of contributions is an interference with its property rights in the sense that its right to collect and then use the funds will be impeded. Even if it be assumed that no injury to property rights is threatened, it seems that injunctive relief would be appropriate to restrain the enforcement of a criminal statute where the attack thereon consists of a bona fide claim that the statute violates one of the personal liberties guaranteed by the Constitution, and that claim is not wholly lacking in merit on its face. In such case the injury consists [fol. 198] of the consequences of the enforcement of the law to the person, viewed in the light of the exalted standing of the constitutional guarantees. These consequences under the procedure in this state are serious.

A violation of the ordinance being a misdemeanor, the case would be cognizable only in an inferior court. From that court the only appeal available is to the superior court, or to its appellate department. If that court denied relief plaintiff would have no recourse to this court or the district court of appeal by appeal or certiorari, although in the event of being imprisoned he would have the remedy of habeas corpus. (Portnoy v. Superior Court, 20 Cal. 2d 375 (125 P. 2d 487).) The cases heretofore cited are not determinative of the point. They merely state the rule that injunctive relief will be given if injury to property rights is threatened. That does not exclude such relief where the injury is to personal rights.

It has been recognized that personal rights may be protected by equity, and they obviously should be, as they are more sacred than property rights. It is said in 28 American Jurisprudence, Injunctions, section 71: "However, there have always been some clearly defined exceptions to the general rule, and there is a progressive tendency on the part of the courts to remedy by injunction, injuries to personal rights. This, is, perhaps, as it should be, because the per- [fol. 199] sonal rights of citizens are more sacred and, by

every test, of more value than things that may be measured by a purely monetary standard, and the courts have expressed difficulty in understanding why injunctive protection of the one class of rights should be placed above similar protection of the other. It may be added that the courts with great uniformity base their jurisdiction to protect purely personal rights by injunction nominally on an alleged property right, where in fact no property rights are invaded, so that the rule seems to be one of those known chiefly by its breach rather — its observance." (See also, 14 A. L. R. 295.) Section 526 of the Code of Civil Procedure does not limit the injury to property rights. On the contrary it authorizes an injunction where the acts would produce great or irreparable injury "to a *party* to the action." (See Nation v. Chism, 154 Okla. 50 (6 P. 2d 766).)

For the reasons above stated, I am of the opinion that the judgment of the trial court should be modified by restricting the injunctive relief to alleged violations of all provisions of the Municipal Code here involved except section 24.01 which I believe to be valid.

Schauer, J., concurred.

[fol. 200] DISSENTING OPINION

"EDMONDS, J., Dissent: In this case, the trial court, upon undisputed evidence, found that the Gospel Army was procuring donations for the purpose of furthering its religious activities. Because these funds are used in part for the purpose of giving relief to persons in distress, Mr. Justice Traynor declares, as a matter of law its activities are charitable and not religious. I cannot concur in that conclusion, nor in the construction of the Los Angeles Municipal Code as requiring the issuance of permits to either organizations or promoters without an appraisal of "the nature or worthiness of a religious cause." And if, contrary to the evidence and findings of the trial court, the Gospel Army, as a matter of law, is a charitable institution, then, by the challenged ordinance it is arbitrarily denied the right to exist unless it complies with undisclosed standards of the commissioners and carries on its operations in accordance with arbitrary and unreasonable regulations.

As Mr. Justice Henshaw pointedly stated in considering an earlier ordinance of the city of Los Angeles, which, like

the one now before the court, gave municipal authorities broad and arbitrary power over every institution ministering to human suffering and spiritual need, charity is a fundamental part of religion. Speaking of the work of the Salvation Army, he said: "Profoundly impressed with the Founder's sympathy for the poor and afflicted, and with His teachings that 'Now abideth faith, hope and [fol. 201] charity, these three, but the greatest of these is charity,' and 'Now, the end of the commandment is charity out of a pure heart,' it has made its special field of religious work the relief of the destitute and rescue of society's outcasts. It has found that it cannot lead the spirit of the weary and heavy burdened without first ministering to his physical necessities. While 'man does not live by bread *only*,' he cannot live at all without bread. Therefore, the charitable organizations of the Salvation Army are vital, integral parts of its religious life and work." (In re Dart, 172 Cal. 47, 49.)

The Gospel Army also endeavors to gain converts for its religious doctrines and carries on activities which minister to material need. The expense of conducting its work is largely met by donations of money and second hand goods solicited from the public. The net proceeds from each of these main sources of income go into the Army's treasury from which is paid the cost of religious services, free distribution of tracts and religious literature, as well as food, lodging, clothing and other necessaries for those in need. The record discloses no segregation of such funds on the books of the Army as being for a religious or for a charitable purpose. Upon this evidence the trial court found that if the Gospel Army is required to comply with the provisions of the ordinance, such enforcement "will amount to a prior restraint on the exercise of their religious activities within the meaning of the Constitution [fol. 202] of the United States . . ." Mr. Justice Traynor sweeps aside the evidence and the trial court's findings upon the ground that, as a matter of law, charity has no place in religion, and whenever an organization carrying on religious activities steps aside from the promulgation of its spiritual doctrines to extend a helping hand by the alleviation of human suffering, it becomes subject to onerous and restrictive regulations. So narrow a view of the practice of religion runs counter to all of the fine principles of human conduct which, more and more,

are leading men of good will to help those less fortunate along the daily path. A religious man, it has been said, is one "whose light shines in the dark places of the earth through righteous acts and helpful deeds."

Large groups of citizens of every faith and creed are regularly devoting much time and effort, at great personal sacrifice, to the cause of those who are in need. If the work in behalf of the less fortunate among us is done in the name of or in connection with the promulgation of a religious doctrine, then the Los Angeles ordinance authorizes the Department of Social Service to add to the indifference, inertia and self interest which solicitation must always overcome, either the condemnation or damnation by faint praise of an official bureau which is authorized to reach a conclusion without regard to anything but the personal opinion of some administrative officer as to the worthiness of the purpose. Whatever is done in the name of religion [fol. 203] for a charitable purpose, the ordinance declares in effect, is to be viewed with suspicion and distrust. There can be preaching without official intervention but any practice of Christian virtues is to be carried on only under the watchful eye of the Department of Social Service according to its notions of "the public interest." And yet my associates say that such legislation lays no restraint upon religion freedom.

It is, of course, true that reasonable regulations may be imposed upon an organization carrying on religious activities. The rule, as stated by the Supreme Court of the United States is that "The general regulation, in the public interest, of solicitation, which does not involve any religious test and does not unreasonably obstruct or delay the collection of funds, is not open to any constitutional objection, even though the collection be for a religious purpose."

More specifically, the court declared that "a State may protect its citizens from fraudulent solicitation by requiring a stranger in the community, before permitting him publicly to solicit funds for any purpose, to establish his identity and authority to act for the cause which he purports to represent." (Cantwell v. Connecticut, 310 U. S. 296, at pp. 304, 306.) But the ordinance here challenged goes far beyond these limits.

As the statute reads, its provisions shall not be applicable to "solicitations made solely for evangelical, mission-

ary, or religious purpose." These terms are not defined, [fol. 204] yet the lawmakers provided "that in any case where it shall come to the attention of the Board that any solicitation has been or is being or intended to be made for evangelical, missionary or religious purposes but in such manner as in the opinion of the Board is calculated to give or may give the impression to the person or persons solicited in any such solicitation or to the public that the purpose of such solicitation is either in whole or in part charitable, then the Board, if in its opinion the public interest will be subserved thereby, shall investigate the matter of such solicitation and give publicity to its findings thereon in such manner as it may deem best to advise the public of the facts of the case." (Sec. 44.16.) If this curious language means anything, it extends the exemption to any solicitation in behalf of a religious organization for a purpose in whole or in part charitable but allows the Board of Social Service Commissioners to state to the public, "in such manner as it may deem best," its official disapproval of any such practical application of the Master's teachings to human need or of the methods by which help is being extended. Under that construction of the exemption provision, no license for the appellant's solicitations may be required. But it probably would be more disastrous to the work of a religious organization to arbitrarily and publicly condemn its activities than to require it to obtain a license, and equally violation of constitutional guarantees.

[fol. 205] But considering the provisions of the ordinance from the standpoint that, under its express terms, only solicitation for contributions to meet the expense of doctrinal church activities is exempt from regulation, although the good works done by an organization such as The Gospel Army are, to borrow Mr. Justice Henshaw's words, "vital, integral parts of its religious life and work", no person may solicit a contribution for its support who has not obtained an "information card". Such a card is issued by the Department of Social Service only following the filing of a "notice of intention" to solicit, which shall include the detailed information specified by section 44.05 of the Code. (ante p. —.) This information is not limited to facts relating to the identity of the proposed solicitor and his authority to act for a particular organization. Also there

must be submitted detailed information relating to the organization's purpose and business affairs and those who are supporting it financially or employed in its activities. In short, all of the data demanded concern the merits of the cause which is asking the public for assistance and the scope of the work it is carrying on.

Moreover, the information card which allows one to solicit, providing he presents it to the person who is approached for a donation, "allowing him sufficient opportunity to read the same, before accepting any contribution . . . ." (sec. 44.12), is not issued as of course upon the filing [fol. 206] of the notice of intention. There is neither requirement nor even suggestion in the ordinance to support Mr. Justice Traynor's suggestion that these cards, "which are in effect permits to solicit, are issued automatically upon the filing of the required information and the payment of the 4¢ for each card." On the contrary, the Department of Social Service shall have the power: "(a) To investigate the allegations of the Notice of Intention, or any statement or reports; (b) To have access to and inspect and make copies of all books, records and papers of such person, by or on whose behalf any solicitation is made; (c) To investigate at any time the methods of making or conducting any such solicitation. . . . ." (Sec. 44.03.)

A majority of the court sanction the indefinite terms of the ordinance relating to the issuance of a permit upon the presumption that the Board of Social Service Commissioners will fairly investigate the facts in connection with each application and promptly make a determination upon them. It may not be asumed, say my associates, that the Board will whimsically or capriciously deny an application, and the courts will relieve from unjust and arbitrary action. The same argument was advanced by the state in Cantwell v. Connecticut, supra, and summarily rejected. The opportunity to obtain judicial correction, said Mr. Justice Roberts, speaking for the court, does not justify interference with constitutional rights. "The availability of a judicial remedy for abuses in the system of licensing [fol. 207] still leaves that system one of previous restraint which, in the field of free speech and press, we have held inadmissible. A statute authorizing previous restraint upon the exercise of the guaranteed freedom by judicial decision after trial is as obnoxious to the Constitution as

one providing for like restraint by administrative action." (p. 306).

Moreover, the inquisitorial authority of the Department is a continuing one. "Whenever, in the opinion of the Board of Social Service Commissioners the Notice of Intention does not disclose sufficient information for the public concerning the facts . . . required to be stated in such Notice or concerning the person or association making such solicitation or on whose behalf such solicitation is made, then, upon the request of said Department, there shall be filed, in writing, within forty-eight (48) hours after such request, such additional information as may be required by said Board upon the foregoing subjects." (Sec. 44.06.) This right may be exercised after the Board has made an investigation, and there is no limitation upon the time within which inquiries must be concluded. Also, there is no restriction upon the number of additional requests the Board may make for information, or any time fixed in the ordinance to prevent the Board from taking months to look into the purpose and scope of an organization's activities; designed delay is invited by the censorious terms of the legislation, and the widest discretion is given to harass, condemn, delay and obstruct. And if perchance [fol. 208] the applicant represents an unpopular cause, then the authority of the Board of Social Service Commissoners to publish the results of its investigations "by such means as may be deemed best to reach the general public and persons interested" (Sec. 44.02) gives opportunity for the undermining of public confidence and provides a vehicle for official propaganda which may do irreparable damage.

Occasion for discrimination is also afforded by section 44.03 which allows the Department of Social Service to issue an information card in a form stating either that the authorization given does or does not constitute an endorsement of the charitable association for which solicitation is to be made. Moreover, the information card may show the pertinent facts set forth in the notice of intention and any additional information "as shall in the opinion of the Board be of asistance to the public to determine the nature and worthiness of the purpose for which the solicitation is made . . ." The information card which the solicitor must carry with him, and either read to each prospective contributor or present to such person for his perusal,

allowing him sufficient time to read it before accepting any donation, may therefore be a sizeable volume of data which in practice, if not in purpose, will effectively block public support of an organization which has a legitimate purpose and against which no criticism justly may be made.

To meet the demands of the city, the receipt required for each donation must be signed by the solicitor and con- [fol. 209] tain "in addition to a description of the amount and kind of the contribution, substantially the following matters: (a) The name of the association, if any, in whose name or upon whose behalf the solicitation is made. (b) A statement as to whether the contribution solicited is to be applied for the general purposes of such association; if any, or for specific purposes, and if for specific purposes the nature thereof shall be clearly stated. (c) A statement that the Information Card, issued by the Department, was presented to the person making the contribution for his perusal prior to receipt by the solicitor of the contribution receipted for . . ." (Sec. 44.15.) Only by means of a traveling office could a solicitor comply with all of these requirements.

As justification for his position, Mr. Justice Traynor asserts that "activities characteristic of the secular ilfe of the community may properly be a concern of the community even though they are carried on by a religious organization." A host of decisions is cited in support of that statement. But the cases relied upon are authority only for the proposition that certain activities such as the sale of religious periodicals by minors, beating a drum on the traveled portions of the city streets, and parades, although carried on by a church, are subject to reasonable regulation by the State under its police power; they do not purport to declare what many be done in the field of reasonable regulation of solicitation for religious purposes. Indeed, excluding In re [fol. 210] Dart, supra, only two of them concerned the constitutionality of a statute regulating the solicitation of funds. One of these two, Prince v. Massachusetts, 321 U. S. 158, upheld a statute restricting the activity of minors. The other decision, Murdock v. Pennsylvania, 319 U. S. 105, expressly excluded consideration of the question now in controversy, for the court declared that there was no issue before it in regard to a registration system for solicitors.

As to In re Dart, supra, the statement from it which is quoted in the majority opinion has no application to solicita-

tion for religious work; it concerns the regulation of organizations which seek contributions for charitable purposes. The declaration that, under the police power, there may be reasonable supervision over persons engaged in the occupation of obtaining money from the public for the maintenance of an organization carrying on charitable work is followed by the pronouncement: "Every person has the right, under our constitution, and perhaps withouts its guarantee, to solicit contributions for a worthy charitable purpose, provided he acts in good faith and honestly applies them to that purpose. The ordinances give the commission power to deprive persons of that right without cause or reason. To the extent that they give this arbitrary power they are contrary to the constitution and void." (In re Dart, supra, p. 57). Certainly the constitutional guarantee gives as much, if not greater, protection to religious endeavors which include [fol. 211] ministration to relieve human suffering. For as James wrote concerning faith without works, "If a brother or sister be naked, and destitute of daily food, And one of you say unto them, Depart in peace, be ye warmed and filled; notwithstanding ye give them not those things which are needful to the body; what doth it profit?" (Jas. 2:5, 16.)

But if the practice of religion may be legally isolated beyond the contaminating reach of charity, then, in my opinion, the legislation is vulnerable to attack as unlawfully circumscribing the activities of every organization which carried on its work without the professon of religious doctrine. Unquestionably the occupation of the solicitation of contributions for charitable purposes may be subjected to regulation, but legislatures or municipalities may not, under the guise of the police power, impose unnecessary and unreasonable restrictions upon the use of private property or the pursuit of useful activities. (McKay Jewelers Inc. v. Bowron, 19 Cal. 2d 595; In re Fuller, 15 Cal. 2d 425; Skalko v. City of Sunnyvale, 14 Cal. 2d 213; In re Monrovia Evening Post, 199 Cal. 263; Frost v. City of Los Angeles, 181 Cal. 22; Ex parte Dickey, 144 Cal. 234; Larson v. Bush, 29 Cal. App. 2d 43.) Also the general and indefinite terms used in the ordinance wholly fail to meet the constitutional requirement that a regulatory statute must specify a standard for official action. (In re Dart, 172 Cal. 47; Hewitt v. State Board of Medical Examiners, 148 Cal. 593; Schaezlein v. Cabaniss, [fol. 212] 135 Cal. 469; County of Los Angeles v. Hollywood Cemetery Assn., 124 Cal. 349; Ex parte Sing Lee, 96 Cal.

359; Yick Wo v. Hopkins, 118 U. S. 356; Hoyt Bros Inc. v. Grand Rapids, 260 Mich. 447.)

The provisions of the Municipal Code which have been summarized in connection with the discussion concerning their application to the charitable work of a religious organization, effectively hamper and restrict any endeavor to better the lot of those in need of material aid and comfort if that effort does not conform to an undisclosed standard. The work of every organization must meet the approval of the department; such as do not, are unfit to live. Moreover, in its practical aspects the ordinance is particularly burdensome upon organizations such as the Gospel Army, which continually solicits donations. "Every person soliciting any contribution for any charitable purpose must file with the Department within 30 days after the close of any such solicitation or within 30 days after a demand therefor by the Department a report to the Department, stating the contributions secured from or as a result of any such solicitation, and in detail all expenses of or connected with such solicitation, and showing exactly for what uses and in what manner all such contributions were or are to be disbursed or distributed." (Sec. 44.14.) What constitutes "the close of any such solicitation?" And to what extent must the organization show "exactly for what uses and in what manner all such contributions were or are to be disbursed or [fol. 213] distributed?" Is every person who is a beneficiary of the organization's helpfulness to be named? Is the value of that aid to be stated in terms of money or spiritual comfort? Must a substantial part of the effort intended for human betterment be devoted to making reports to a governmental agency set upon the minute and continuing supervision of all charitable activities?

Very obviously, the purpose of these reports is to provide a basis for keeping each organization within the range of a policy which is not stated in the ordinance and may be as variable as differing views upon permissible bounds of social service. For an information card may be recalled by the Board upon receipt of data which, in its opinion, shall render incorrect any statement set forth in that document. Under such circumstances, the Board shall amend or correct the card, or issue a new one in accordance with the additional data obtained. But impliedly each card is to be issued for a period which need not be uniform as to all applicants, and is valid only during that time (sec. 44.02). Under those

provisions, only by carrying on its work in accordance with the views of the Board of Social Service Commissioners, and making reports in such detail as to satisfy demands which cannot be measured against any standards set by law, may an organization continue.

Also, there is no standard or limitation provided in regard to the data printed upon the information card. As a solicitor must show this card to each prospective donor, al- [fol. 214] lowing him sufficient opportunity to read it before accepting any contribution, the Board may arbitrarily express disapproval of a worthy charity or make the information so voluminous that solicitation would be effectively blocked. And the unlimited power given to the Board to publish the results of its investigations is broad enough to authorize presentation to the public of confidential data concerning policies and details of management having no relation to reasonable licensing requirements.

If an organization runs the gauntlet of these provisions and is able to carry on its work to the satisfaction of the official censors of charitable purposes, every person whom it employs for "pecuniary compensation or consideration" to obtain subscriptions from the public must also secure a license. The way of an applicant for such a license is a hard one. In his application he must set forth, in addition to facts showing that he "is of good character and reputation", "such information as may be required by the Board." Thereupon, the Board shall make such investigation of the applicant and his affairs as it deems advisable. No limitation as to the extent of such an investigation is imposed and no time is fixed within which it must be concluded. Any ground that would have led to a denial of the license is also ground for its revocation.

If, contrary to the narrow interpre-tion of religion laid down by my associates, human kindness is included in its practice, then these provisions governing the licensing of [fol. 215] individuals to solicit contributions are clearly invalid, for they go much further than to lay down a reasonable requirement for registration and identification. Indeed, there is no statutory statement of the data which an applicant must submit, for the specified information is "in addition" to that which may be required by the Board. The majority allows the regulation of solicitation for religious purposes to go far beyond the limitation specified

by the United States Supreme Court in the Cantwell case, supra, by approving the requirements that a promoter or solicitor be granted a license only if the Board is satisfied that he is of good character and reputation and equal to the financial responsibility incident to the proposed solicitation; that he file a bond and pay a license fee; and that he give a complicated form of receipt to each contributor. The provision authorizing the revocation of a license after a hearing, for any "unfair, unjust, inequitable or fraudulent" act or for any ground that would have led to a denial of the license also goes far beyond the permissible bounds fixed for regulation of solicitation for a religious purpose.

And construing any organized plan for taking care of those in need of material aid as beyond the reach of religious duty or concern, the licensing provisions which have been mentioned in the next to the last paragraph unreasonably restrict the right of an individual to engage in the business of solicitation for charitable purposes and also [fol. 216] fail to set up a definite standard which the applicant for a license must meet. The cases cited by the majority as authority for the proposition that a promoter or solicitor may be required to submit proof of his good character and reputation stand only for the rule that a state may do so in connection with regulation of the practice of a profession which requires the possession of special knowledge, skill and training, or the sale of merchandise of a particular character. (Leach v. Daughterty,, 78 Cal. App. 83 (broker's certificate under the Corporate Securities Act); Riley v. Chambers, 181 Cal. 589 (license of real estate broker); Gundling v. Chicago, 177 U. S. 183 (license for sale of cigarettes).) These decisions, in my judgment, have no application to legislation laying down licensing requirements for the business of soliciting funds for charitable purposes.

A recent controversy in Michigan presented substantially the same question as is now before this court. An ordina-ce which prohibited the solicitation of contributions or the sale of goods "the proceeds from which, or any part thereof, are to be used for any so-called charitable purpose" without a written permit to be granted by the city manager, when it appeared, after investigation and report by a police officer, "that the charity is a worthy one" and

that the applicants for a permit "are fit and responsible parties", was held to violate the provisions of a State constitution prohibiting deprivation of life, liberty, or prop-
[fol. 217] erty without due process of law. "It is requisite to the validity of the ordinance", said the court, "that it should state 'a standard for the guidance' of the official who passes upon the application for the permit . . . The general and indefinite terms used in this ordinance wholly fail to comply with this requisite." (Hoyt Bros. Inc. v. Grand Rapids, supra, (128 A. L. R. 1363.)

Turning to the other provision of the Los Angeles Municipal Code which is in controversy, although, generally, speaking, the business activities of a religious organization come within the scope of regulations tending to protect the morals, safety or general welfare of the public, section 24.01 relating to dealers in second-hand goods is also unconstitutional for the reason that it sets no standard to which an applicant for a license must conform. To carry on the business of a "secondhand dealer", one must "file an application in writing with the Board (of Police Commissioners) specifying by street and number the place where such proposed business is proposed to be conducted or carried on; . . . The application shall be signed by the applicant and shall contain his residence address. Upon receipt of such application the Board shall cause to be investigated the business of the applicant and location at which applicant proposes to engage in business as specified in said application. Thereafter the Board may issue a permit to the applicant which shall be effective for the remaining portion of the current year."

This enactment states no grounds justifying a denial of
[fol. 218] the application, specifies no time within which an investigation must be made, makes no provision for a hearing upon the application, and by the use of the word "may", impliedly allows the Board to grant or withhold official favor for any reason which whim or fancy may dictate. No standard of character or business responsibility is set for the guidance of the Board nor are there any qualifications specified for one desiring to deal in secondhand goods. Such legislation has uniformly been held not to measure up to the requirements of constitutional guarantees. (In re Dart, supra; Hewitt v. State Board of Medical Examiners, supra; Schaezlein v. Cabaniss, supra;

County of Los Angeles v. Hollywood Cemtery Assn., supra; Ex parte Sing Lee, supra; Yick Wo v. Hopkins, supra; Hoyt Bros. Inc. v. Grand Rapids, supra.)

Under these circumstances, in my opinion, as the right of The Grospel Army and those acting in its behalf to solicit contributions for either religious or charitable purposes is a property right, the unlawful interference with which will cause irreparable injury, the trial court properly enjoined the enforcement of the ordinances here challenged (Brock v. Superior Court, 12 Cal. 2d 605; Bueneman v. City of Santa Barbara, 8 Cal. 2d 405), and the judgment should be affirmed."

[fol. 219] In Supreme Court of California, in Bank

[Title omitted]

Order Denying Rehearing—Filed December 17, 1945

Respondent's petition for rehearing Denied. Edmonds, J.; Carter, J. and Schauer, J., voting for a rehearing. Dated Dec. 17, 1945.

Gibson, Chief Justice.

[File endorsement omitted.]

[fol. 220] In Supreme Court of California

[Title omitted]

Material Register of Actions Entries

August 23, 1943—Filed C. & R. Transcript—Appeal from Judgment.

September 21, 1943—Transferred to 2nd District Div.1.

March 9, 1944—Transferred to Supreme Court.

April 7, 1944—Ordered on bank calendar, L. A. May 9, 1944.

May 9, 1944—Cause called and continued to May 11, 1944.

May 11, 1944—Cause called—On consent of counsel, cause submitted on briefs on file.

November 20, 1945: The judgment is reversed. Traynor, J.

We concur: Shenk, J.; Spence, J.; Gibson, C.J.
I dissent: Carter, J.
I concur: Schauer, J.
I dissent: Edmonds, J.
December 10, 1945: Filed Respondent's petition for rehearing.
December 17, 1945: Rehearing denied. (Edmonds, J.; Carter, J.; and Schauer, J., voting for rehearing.)
December 21, 1945—Remittitur issued.

[fols. 221-224] IN THE SUPREME COURT OF CALIFORNIA

Los Angeles

No. 18808

(Superior Court No. 470,368)

THE GOSPEL ARMY, a Corporation, Plaintiff, Respondent,

vs.

THE CITY OF LOS ANGELES, a Municipal Corporation, The Board of Social Service Commissioners, Department of Social Service, and Dan O. Hoye, City Controller, Defendants, Appellants

On Appeal from the Superior Court in and for the County of Los Angeles

JUDGMENT—Filed November 20, 1945

The above entitled cause having been heretofore fully argued, and submitted and taken under advisement, and all and singular the law and premises having been fully considered,

It Is Ordered, Adjudged, and Decreed by the Court that the Judgment of the Superior Court in and for the County of Los Angeles in the above entitled cause, be and the same is hereby reversed.

Appellant to recover costs on appeal.

I, A. V. Haskell, Clerk of the Supreme Court of the State of California, do hereby certify that the foregoing is a true copy of an original judgment entered in the above entitled

cause on the 20th day of November, 1945, and now remaining of record in my office.

Witness my hand and the seal of the Court, affixed at my office, this 21st day of December, A. D. 1945. A. V. Haskell, Clerk, by L. F. White, Deputy. (Seal.)

[fol. 225] IN THE SUPREME COURT OF CALIFORNIA

PETITION FOR APPEAL—Filed February 26, 1946

Aggrieved by the decision of the Supreme Court of the State of California duly entered and made final on the 17th day of December, 1945, reversing the judgment of the lower state court in favor of petitioner, and claiming that rights guaranteed by the 14th Amendment to the Constitution of the United States are thereby violated, petitioner, The Gospel Army, hereby prays that an appeal be allowed to the Supreme Court of the United States.

Robert H. Wallis, Attorney for Petitioner. The Gospel Army, by Ruth Colbert, Vice President.

[fol. 226] IN SUPREME COURT OF CALIFORNIA

ASSIGNMENT OF ERRORS

The said Appellant, The Gospel Army, assigns the following errors in the record and proceedings in said case:

I

The Supreme Court of the State of California erred in its opinion, decision and judgment in the case of Gospel Army v. City of Los Angeles and others in holding that the "Charities and Relief" ordinance of said City is a valid exercise of the police power and is not, as applied to religious organizations, and especially to said Gospel Army, violative of the right to exercise freedom of religion, guaranteed by the Fourteenth Amendment to the Federal Constitution, and that it does not arbitrarily and unreasonably, and by its mere fiat, segregate all religious-charitable activities of such organization from the missionary, evangeli-

[fol. 227] cal and religious activities of such organizations,

and that it does not impose upon all religious-charitable activities of such organizations unreasonable, burdensome and time-consuming prior restraints.

II

The said Supreme Court erred in its opinion, decision and judgment in making determinations by disregarding and refusing to follow the rule that where the rights of freedom of the press or of religion conflict with other constitutional rights, the former occupy a preferred position and in all cases the Court must weigh the circumstances and appraise the reasons in support of the regulation of those rights, and consistently accorded to the regulations as written in the ordinance involved the presumption that they are warranted and that officers of the Department of Social Service and of the Board of Social Service Commissioners of said City and said Department and said Board will not abuse this authority conferred upon them and favor some and discriminate against others, although empowered to do so, and on that theory said opinion, decision and judgment holds that said Department automatically grants permits to solicit donations for charities when the applicant has complied with provisions prerequisite to the issuance of the permit or license, although no provision of said ordinance so requires or provides.

[fol. 228]

III

The Supreme Court of the State of California erred in its opinion, decision and judgment in said case in holding that said ordinance does not unreasonably, arbitrarily and unlawfully violate the equal protection of the laws clause of the Fourteenth Amendment to the Constitution of the United States to said Gospel Army, and to one of its solicitors, Mrs. Colbert, and to all religious organizations and solicitors situated similarly to said last-named parties, by its definition of the term "promoter" and by arbitrarily creating a class of solicitors designated as "promoters," and by exacting from such promoters higher fees for permits or licenses than are required of other solicitors, and by requiring the execution of a prohibitively high indemnity bond by promoters whereas no bond is required of other solicitors, and by there being no reasonable, logical or substantial basis for such distinctions.

IV

The said Supreme Court erred in its opinion, decision and judgment in said case in holding that said ordinance requires the Department of Social Service to issue the permit or Information Card, which all solicitors must have before soliciting donations for charities, upon the filing of the information required by said Department and the payment of 4¢ for each card, although said opinion recognizes that no express provision of said ordinance so provides, and al-
[fol. 229] though, as shown by testimony of the administrative employee of said Department it claims the right under said ordinance to at any time *to* refuse to issue Information Cards.

V

The said Supreme Court erred in its opinion, decision and judgment in holding that the provisions of said Section 44.02 of said ordinance which authorize said Board to "recall every such Information Card and amend or correct the same" and require the person who files it, or association on whose behalf the Notice of Intention was filed, to return said card and to present the recalled Information Card within 48 hours after receiving notice to return it, are reasonable and valid and not burdensome, and said Supreme Court erred in failing and refusing to hold that said provisions are unreasonably time-consuming and burdensome and infringe the rights of solicitors of donations and associations on whose behalf such solicitations are made to the exercise of the right of freedom of religion and constitute prior restraints upon the exercise of such rights, and of the right to engage in charitable activities, as guaranteed by the Fourteenth Amendment to the Federal Constitution.

VI

The said Supreme Court erred in its opinion, decision and judgment in said case in holding that Section 44.02 of said ordinance is reasonable, not burdensome and valid in empowering the Board to publish the results of investiga-
[fol. 230] tions by the Department pertaining to applications for permits to solicit and the allegations of "Notice of Intention" and to give publicity to any such results by such means as may be deemed best to reach the general public, and persons interested, and said opinion, decision and

judgment erred in failing and refusing to hold that said provisions permit unreasonable delays and constitute prohibitive burdens upon the exercise of religious and charitable activities and the freedom of religion and the right to be charitable, in contravention of the due process clause of the Federal Constitution.

VII

The said Supreme Court erred in its opinion, decision and judgment in said case in holding valid and constitutional the provision in Section 44.03 of said ordinance which provides that in issuing an Information Card (permit to solicit) said Department has power to show in said card that such issuance is "not an endorsement" or to state that "they endorse such charitable association," and said Supreme Court erred in failing and refusing to hold that said provision is a nullity on the ground that it delegates to the Department power to endorse or refuse to endorse, arbitrarily and capriciously, since no reasonable standard is provided to guide and measure its decision, and thus violates the due process clause of the Federal Constitution; also, on the ground that said enactment creates two classes [fol. 231] of permits and charitable associations, the endorsed and the unendorsed, and arbitrarily and unreasonably denies to the latter the privileges and protection which it grants to the former, in violation of the equal protection of the laws clause of the Fourteenth Amendment to the Federal Constitution.

VIII

Said Supreme Court erred in its opinion, decision and judgment in said case in holding valid and constitutional the provisions of said ordinance in Section 44.03 thereof, which provides that upon the filing of a Notice of Intention (petition for permit) to solicit with said Department, before acting on said petition, said Department is authorized to investigate the allegations of said petition, or Notice of Intention, and to "have access to and inspect and make copies of all books, records and papers of such person, by or on whose behalf any solicitation is to be made," and said Supreme Court so erred, as aforesaid, in failing and refusing to hold that each and all of said actions so authorized to be taken by said Department are unreasonable

and constitute arbitrary and onerous limitations upon the right to solicit for charity, and are prior restraints upon the exercise of the right of freedom of religion, and contravene the Fourteenth Amendment to the Federal Constitution upon both of these grounds.

IX

Said Supreme Court erred in its opinion, decision and [fol. 232] judgment in said case in holding valid the provision in Section 44.03 of said ordinance which authorizes the said Department, in issuing to an applicant for a permit to solicit, called therein an Information Card, to set forth therein information secured by independent investigation concerning the applicant, of which he has not been apprized or had opportunity to refute or explain which "in the opinion of the Board" shall be of assistance to the public to determine the nature and worthiness of the purpose for which the solicitation is made," and said Court erred in its opinion, decision and judgment in failing and refusing to hold that said provision is not void and does not violate the due process clause of the Federal Constitution for each of the following reasons:

1. That it empowers the defendant Board and Department to deprive the applicant of a property right and property without due process of law;

2. That it provides no guide or standard by which said Board and said Department shall determine what information will be of assistance to the public to determine the nature and worthiness of the charitable purpose for which the solicitation is to be made;

3. That it constitutes an unreasonable and burdensome previous restraint upon the exercise of the right to solicit for charitable purposes;

4. That as applied to solicitations which are an integral [fol. 233] part and in furtherance of the purely religious activities of a religious organization, and as applied to the Gospel Army and its solicitors, it constitutes a prohibitive prior restraint upon the exercise of the right of freedom of religion.

X

Said Supreme Court erred in its opinion, decision and judgment in said case in holding to be valid and not violative

of the right of religious freedom or of the right to engage in charitable activities the provisions of Section 44.05 of said ordinance, which provide as follows:

"No person shall solicit, nor shall any officers or member of any association authorize any person to solicit, any contribution for any charitable purpose unless, within the fiscal year of the City in which such solicitation is made and a least ten (10) days prior to the beginning of such solicitation, there shall have been filed with the Department, on a form furnished by said Department, by such person or association upon whose behalf the solicitation is made, written Notice of Intention to solicit such contribution, which notice shall contain complete information as follows:

"(a) The purpose of the solicitation and use of the contribution to be solicited;

"(b) A specific statement, supported by reasons and, if available, figures, showing the need for the [fol. 234] contribution proposed to be solicited;

"(c) The character of such solicitation and how it will be made or conducted;

"(d) The expenses of the solicitation, including salaries and other items, if any, regardless of from what funds such expenses are payable;

"(e) What portion of the contributions collected as a result of the solicitation will remain available for application to the specific purposes declared in the Notice of Intention as the object of the solicitations;

"(f) A specific statement of all contributions collected or received by such person or association within the calendar year immediately preceding the filing of such Notice of Intention. The expenditures or use made of such contributions, together with the names and addresses of all persons or associations receiving salaries, wages, compensation, commissions or emoluments from such contributions, and the respective amounts thereof;

"(g) The names and addresses of the officers and directors of any such association for which the solicitation is proposed to be made;

"(h) A copy of the resolution, if any, of any such association authorizing such solicitation, certified to as a true copy of the original of such resolution by the officer of such association having charge of the records thereof;

[fol. 235] "(i) A statement that the signers of such Notice have read and are familiar with the provisions of this Article and you will require all solicitors engaged in such solicitation to read and be familiar with all sections of this Article prior to making any such solicitation."

Said Supreme Court erred in its opinion, decision and judgment in failing and refusing to hold that each of the provisions of this section constitute a prior restraing upon the exercise of the right of religious freedom, and of the right to engage in charitable activities, and to hold that said prior restraints are inhibited by the Fourteenth Amendment to the Federal Constitution; said Court erred in failing and refusing to hold that, as applied to the Gospel Army and to its solicitors and their solicitations, each and all of said provisions are unreasonable and burdensome and time-consuming previous restraints upon the exercise by each of them of the irghts above set forth and violations of the said Fourteenth Amendment.

Said Supreme Court also erred in holding that Section 44.05, as applied to solicitations for charity by religious organizations, and especially to said Gospel Army, where such solicitations are used in spreading religious doctrines and as an integral part of such religious activities, said section does not create prior restraints upon the exergise of [fol. 236] the right of religious freedom in violation of said Fourteenth Amendment.

XI

Said Supreme Court erred in its opinion, decision and judgment in holding adequate and valid the provision contained in Section 44.06 of said ordinance, which empowers said Department to decide that a Notice of Intention (petition for permit) "does not disclose sufficient information for the public concerning the facts required by Section 44.05 to be set forth or concerning the person or association making such solicitation or on whose behalf such solicitation

is made," "and said Supreme Court so erred in failing and refusing to hold that said provision is void and violates the Fourteenth Amendment to the Federal Constitution, in that it empowers the Department to act and decide captiously and arbitrarily and unreasonably, and provides no basis or standard to control the decision involved in said provision.

XII

Said Supreme Court erred in its opinion, decision and judgment in holding that all of the provisions of Section 44.06 of said ordinance are valid and not burdensome, which provisions require that the applicant for permission to solicit "must file with the Notice of Intention a statement of any agreement made with any agent, solicitor, promoter . . . of such solicitation, together with a copy of each agreement, which may be in writing, and, if a change is [fol. 237] made in such agreement, applicant must within twenty-four hours file a true copy of it with the Department, and must, if requested by the Department, provide any further information which the Board may require, and, if required by the Department, the Notice of Intention and additional information must be signed by the person intending to make such solicitation and by two officers of the association."

Said Supreme Court erred, as above set forth, and in failing and refusing to hold that said provisions are violative of the Fourteenth Amendment to the Federal Constitution and of the right of those who seek to engage in charitable or religious activities, because said provisions each create and constitute a burdensome bar and a previous restraint upon the exercise of such persons to freely engage in both or either of said activities.

XIII

Said Supreme Court erred in its opinion, decision and judgment in holding that the provisions of Section 44.12 of said ordinance are reasonable, valid and constitutional and not burdensome, as applied to solicitors for charity, whether the solicitation be for charity alone or for charity in furtherance of religion, which provisions require that all solicitors must read the Information Card to any person solicited for donations or present it to such person and

"allow him sufficient opportunity to read the same before accepting any contributions so solicited," and said [fol. 238] Supreme Court erred in its opinion, decision and judgment in failing and refusing to hold that said provisions are so burdensome as to be prohibitive of solicitations, and are arbitrary and unreasonable prior restraints upon the exercise of the right of freedom of religion, and especially of the exercise of said right by the Gospel Army and all of its solicitors; also of their rights to engage in charitable activities, and, hence, that said provisions contravene the Fourteenth Amendment to the Federal Constitution.

XIV

The said Supreme Court erred in holding that the provisions of Section 44.14 of said ordinance are not burdensome and are reasonable, valid and constitutional, which provisions require that solicitors file with the Department a report to said Department, stating the contributions secured, "in detail all expenses of or connected with such solicitation," "exactly," for what uses and the manner in which all contributions were disbursed, and that the statement be signed by the persons or associations obligated to file the Notice of Intention, and said Supreme Court erred in not holding and in refusing to hold that each of said requirements is burdensome and unreasonable and a prior restraint upon the freedom of religion of the Gospel Army and its solicitors and creates and constitutes a prohibited prior restraint upon the exercise of the right of religious freedom and the right to be charitable of said parties, and of all others similarly situated.

[fol. 239] XV

The said Supreme Court in its opinion, decision and judgment erred in holding that the provisions in respect to receipts to be given for donations and the contents thereof in Section 44.15 of said ordinance are not burdensome and are reasonable, valid and constitutional; said pertinent provisions are:

> "No person shall solicit any contribution for any charitable purpose unless such person shall tender to each person making such contribution a written receipt signed by the solicitor which contains in addition

to a description of the amount and kind of the contribution, substantially the following matters:

"(a) The name of the association, if any, in whose name or upon whose behalf the solicitation is made.

"(b) A statement as to whether the contribution solicited is to be applied for the general purposes of such association, if any, or for specific purposes, and if for specific purpose the nature thereof shall be clearly stated.

"(c) A statement that the Information Card, issued by the Department, was presented to the person making the contribution for his perusal prior to receipt by the solicitor of the contribution receipted for."

[fol. 240]

XVI

Said Supreme Court, by its opinion, decision and judgment erred in failing and refusing to hold that the foregoing provisions do not constitute a prohibitive prior restraint upon the exercise of the right of religious freedom, and upon the exercise of that right and the right to dispense charities by the Gospel Army and its solicitors and that therefore said provisions are violative of the Federal Constitution, amendment fourteen thereof.

XVII

Said Supreme Court, by its opinion, decision and judgment erred in holding reasonable, valid and constitutional the provision contained in Section 44.16 of said ordinance which segregates solicitations for charitable purposes from solicitations for evangelical, missionary or religious purposes and severs from the latter class all solicitations whose purposes are not purely evangelistic, missionary or religious even though they are in furtherance and an integral part of religion and other religious activities, and said Supreme Court, in its opinion, decision and judgment erred in failing and refusing to hold that said provision is arbitrary, unreasonable and discriminatory, in that it attempts by law to remove activities which in fact are religious from the realm of religion and from the protection [fol. 241] of the 14th amendment to the Federal Constitution and its guaranty of freedom of religion.

XVIII

Said Supreme Court, by its opinion, decision and judgment erred in upholding as valid, constitutional and not burdensome or unreasonable the provision of Section 44.16 of said Ordinance which authorizes the Board of Social Service Commissioners of said defendant City to investigate the matter of solicitations for solely evangelical, missionary or religious purposes and if "in the opinion of the Board" such solicitation "is calculated to give or may give the impression to the person or persons solicited in any such solicitation or to the public that the purpose of such solicitation is either in whole or in part charitable, then the Board, if in its opinion the public interest will be subserved thereby, shall investigate the matter of such solicitation and give publicity to its findings thereon in such manner as it may deem best to advise the public of the facts of the case."

XIX

Said Supreme Court, by its opinion, decision and judgment, erred in failing and refusing to hold that the foregoing provision is not a direct violation of the right of freedom of religion and of its exercise, and that it does not permit and create a prior restraint upon and interference with [fol. 242] the exercise of said right in violation of the 14th amendment to the Federal Constitution.

XX

Said Supreme Court, by its opinion, decision and judgment, erred in holding that said Section 44.16 does not violate the rights of religious freedom and the right of property guaranteed by said 14th amendment, of religious organizations and especially such rights of the Gospel Army and of its solicitors and promoters, in that it excludes from the exemption solicitations of money and goods if any part thereof is to be applied to charities incident to religious activities or to the compensation and support of the solicitor, in that said section of the Ordinance provides that solicitations "made solely for evangelical, missionary or religious purposes" are exempt from all other provisions of the ordinance which are challenged herein as violative of petitioner's rights, and by this provision the Gospel Army and its solicitors and promoter who seek donations for charity are also arbitrarily denied the equal protection of the laws

under said 14th amendment. Section 44.16 of said Ordinance empowers the Board to investigate solicitations for evangelical, charitable and religious purposes and to publicize its "findings" concerning such solicitations, "if in its opinion the public interest will be subserved thereby."

XXI

[fol. 243] Said Supreme Court, by its opinion, decision and judgment in this case, erred in holding that said provision does not vest in the Board unbridled power to arbitrarily and partially nullify the efforts of solicitors and promoters for religious purposes and organizations and to thereby infringe the rights of religious freedom and the acquirement of property in violation of the said 14th amdnement, of promoters and other solicitors for such organizations and purposes, and especially, such rights of the Gospel Army and of its promoter and other solicitors.

XXII

Said Supreme Court, by its opinion, decision and judgment in this case, erred in holding that the provision of Section 44.19 of said ordinance which authorizes the Board to require applicants for license to solicit as promoters to furnish "such information as may be required by the Board" is reasonable, not burdensome or vague in its delegation of power and is valid and constitutional, and it erred in failing and refusing to hold and adjudge that said provision constitutes a burdensome prior restraint upon the exercise of the rights of freedom of religion and the right to dispense charity in contravention of the due process clause of the Federal Constitution and is also violative of that clause because it gives the Board unrestricted power to [fol. 244] make requirements prerequisite to granting a promoter's license of an unreasonable, arbitrary and capricious character, and to deny such licenses if such requirements are not met; and, said Supreme Court erred in failing and refusing to determine, hold, and adjudge that the foregoing provisions are harsh, unreasonable, and burdensome as applied to promoter-solicitors for any charities and especially as applied to those who solicit for a religious organization whose charitable activities are in furtherance of the spreading of its religious beliefs and doctrines, and in failing and refusing to hold and adjudge that as so ap-

plied and as applied to said Gospel Army and its promoter-solicitor said provisions are prohibitive prior restraints upon the exercise of the right to dispense charity and of the right to exercise freedom of religion.

XXIII

Said Supreme Court, by its opinion, decision and judgment in this case, erred in holding that provisions in Section 44.19(2)(a), (b) and (c) and subsection 3, are not burdensome and are reasonable, valid and constitutional. Said provisions are: "No promoter shall in any manner whatsoever, solicit within the City of Los Angeles any contribution for any actual or purported charitable use, purpose, association, corporation or institution without a license from the Board so to do.

"(2) Application.

[fol. 245] "To obtain such license, such promoter shall make and file with the Board an application therefor in writing. In such application, the applicant shall set forth, in addition to such information as may be required by the Board:

"(a) The name and address of the applicant, and if such applicant be a corporation, the name and address of each of its managing officers and agents, and, if it be an unincorporated association, firm or partnership, the name and address of each member of such unincorporated association, firm or partnership;

"(b) A succinct statement of facts showing that the applicant, if not a corporation or an unincorporated firm, association or partnership, is of good character and reputation, or if the applicant be a corporation that each of its managing officers and agents is of good character and reputation, or if the applicant be an unincorporated association, firm or partnership, that each of its members is of good character and reputation.

"(c) The general plan, character and method in or by which applicant proposes to conduct its or his business as a promoter." (Gospel Army Appeal, p. 16)

Subsection (3) requires the applicant to post a bond in the sum of $2000.00, to insure payment of any "direct

[fol. 246] pecuniary loss sustained through any theft on the part of the principal."

XXIV

Said Supreme Court, by its opinion, decision and judgment in this case, erred in upholding Section 44.19, subsection (4) which requires the applicant for a promoter's license to pay a fee of $25.00 to said Board of Social Service Commissioners, and Subsection (5) which authorizes said Board to make such further investigation of the applicant and of "his affairs" as the "Board may deem advisable", and "if from such examination the Board shall be satisfied that the applicant is of good character and reputation", has "sufficient financial responsibility to carry out obligations incident to any solicitation such as applicant may make"; that his statements in his "application are true", etc., the application shall be granted. "Otherwise, the Board shall refuse to issue the license."

Said Supreme Court erred in holding and adjudging that the foregoing provisions are valid and constitutional and are not burdensome but are reasonable as applied to promoter-solicitors for charities and for religious organizations, donations to which are used in furtherance of their religious activities and especially to said Gospel Army and its promotor-solicitor Mrs. Colbert.

XXV

Said Supreme Court, by its opinion, decision and judg-
[fol. 247] ment in this case, erred in holding that the provision of Section 44.19(3) which empowers the Board to make such investigation of the applicant and "his affairs" "as they deem advisable" and from such examination to base their determination of his qualifications to be granted a license, is reasonable and not vague in its delegation of powers and standards for their use and it erred in failing and refusing to hold and adjudge that said provision is not violative of due process under the 14th amendment to the Federal Constitution because it fixes no standard and authorizes said Board to make its decision upon matters wholly irrelevant to the purpose of the inquiry and to discriminate against some and favor others.

XXVI

Subdivision 5 of Section 44.19 provides that the Board may examine the application and investigate the applicant and his affairs as the Board deems advisable and shall issue a license "to solicit as a promoter" contributions within said city if the Board is satisfied that the applicant is of good character and reputation and has sufficient financial responsibility to carry out the obligations incident to any solicitation to be made as such promoter, etc.

Said Supreme Court, by its opinion, decision and judgment in this case, erred in holding that said provisions can be made to apply to a solicitor of donations for a religious [fol. 248] organization, which donations are to be used and are used in furtherance of the religious activities of said organization, including its charities, without being an infringement of the said 14th amendment and the right of freedom of religion and the inhibitions therein against prior restraints upon the exercise thereof.

XXVII

Said Supreme Court, by its opinion, decision and judgment in this case, erred in holding that the provision in Section 44.01 of said ordinance which states: "No person who is a bona fide paid officer or employee of a social service agency endorsed by the Board of Social Service Commissioners of the City of Los Angeles shall be considered a promoter within the meaning of this article" is a reasonable classification and in holding that it is valid and constitutional, since said provision arbitrarily, capriciously and unreasonably exempts employees and officers of endorsed agencies from the necessity of securing permits and licenses to solicit, and from all of the burdensome and time-consuming requirements under which other solicitors and promoters are compelled to solicit and said Supreme Court erred in holding that said exempting provision is not unreasonably discriminatory and does not deny the equal protection of the laws to charitable organizations [fol. 249] not endorsed by said Board and to their solicitors and promoters, in contravention of the 14th amendment to the Constitution of the United States.

XXVIII

The Supreme Court of the State of California, in its opinion, decision and judgment, erred in holding that the

definition of the term "promoter" in Section 44.01 of said ordinance and the provisions contained in Section 44.19 thereof pertaining to promoters, do not create and constitute an arbitrary and unreasonable classification of solicitors, and said Court erred in holding that the classification thus provided is reasonable and the standards provided are adequate, and said Court further erred in failing and refusing to hold that, since no substantial difference exists between said definition of "promoters" and the definition of "solicitors" contained in Section 44.01 of said ordinance, and since the provisions of Section 44.19 concerning promoters require promoters to obtain a "license" and to pay a substantial fee therefor, and to provide a bond of $2000.00, and to submit to unrestricted investigation by said Board, and the mandate of Section 44.19 by which promoters must file with said Board "such information as may be required," and to submit to denial of a license upon a mere exercise of the Board's whimsy, said definition and classification of promoters as distinguished from other solicitors is arbitrary and unreasonable [fol. 250] and denies to promoters and their employees the equal protection of the laws as guaranteed by the 14th amendment to the Federal Constitution.

XXIX

The Supreme Court of the State of California, in its opinion, decision and judgment, erred in holding that certain provisions of Sections 44.03, 44.05, 44.06 and 44.12 of said ordinance, collectively and read together, are valid, constitutional and reasonable and are not burdensome as applied to charitable associations and religious organization, and their solicitors and promoters who solicit donations of money and articles of personal property for charitable or religious-charitable purposes.

Said Section 44.12 provides that the solicitor shall read his Information Card "to the person solicited" or "present to said person for his perusal," and allow "him sufficient opportunity to read the same before accepting any contribution."

Since, pursuant to Sections 44.03, 44.05 and 44.06 of said ordinance, the contents of said Information Card, (permit or license), may be of unlimited volume and must, to comply with said last named sections be so comprehen-

sive as to render the requirements of Section 44.12 prohibitive of public solicitations of donations for money or personal property to be used in furtherance of religion, said Court erred in its opinion, decision and judgment in [fol. 251] failing and refusing to hold that each of said provisions, all, especially all of them together, create a system of procedure which constitutes an unreasonable, burdensome and prohibitive prior restraint upon the exercise by the Gospel Army and its promoter and other solicitors in the rights of religious freedom and the free exercise thereof, and the right to dispense charity and to acquire, possess and dispose of property as guaranteed by the 14th Amendment to the Federal Constitution.

XXX

Section 44.06 of said ordinance authorizes said Board may require the applicant for permission to solicit to file, in writing, within 48 hours, "additional information" as to the matters enumerated in Section 44.05, "whenever, in the opinion of the Board the 'Notice of Intention' does not disclose sufficient information for the public" concerning such facts.

Said Supreme Court erred in holding that this section does not authorize said Board to protract its investigation without limit and that both sections, 44.05 and 44.06 do not extend the range of investigation unreasonably and that they do not constitute prior restraints upon the exercise of freedom of religion in violation of said 14th amendment, and that as applied to petitioner said sections have not constituted such restraints upon petitioner's said [fol. 252] right, and of its constitutional right under the due process clause of the Federal Constitution to be charitable and dispense charity.

Said Supreme Court, in its opinion, decision and judgment erred in that, as to each of the foregoing Assignments of Error, said Court failed and refused to hold that the error assigned has violated the right of said Gospel Army, as created and guaranteed by the 14th Amendment to the Constitution of the United States, to freedom of religion and to the free exercise thereof and the right to dispense charity and to receive donations for charitable purposes through its promoter and solicitor, whether such activities be in furtherance of religion alone, or for charity alone, or for both.

For which errors as above assigned the appellant The Gospel Army prays that said judgment of the Supreme Court of the State of California dated November 20, 1945 and finally entered and made, by the denial of appellant's petition for rehearing, on December 17, 1945, reversing the judgment of the trial court, be reversed, and that a judgment be rendered in favor of appellant and for costs.

The Gospel Army, by Ruth Colbert, Vice President, Appellant. Robert H. Wallis, Attorney for Apellant.

[fol. 253] [File endorsement omitted.]

[fol. 254] IN THE SUPREME COURT OF CALIFORNIA

[Title omitted]

ORDER ALLOWING APPEAL—Filed February 26, 1946

Appellant, The Gospel Army, having prayed for allowance of appeal by it to the Supreme Court of the United States from the judgment made and rendered in the above entitled cause in and by the Supreme Court of the State of California on the 20th day of November, 1945, and finally entered upon denial of the petition for rehearing by The Gospel Army, on the 17th day of December, 1945, and from each and every part thereof, and having presented and filed its petition for appeal, Jurisdictional Statement, Assignments of Errors and prayer for reversal, pursuant to the applicable statutes and rules of the Supreme Court of the United States;

It is now Ordered that an appeal be allowed, and the same is hereby allowed in the above entitled case to the [fols. 255-256] Supreme Court of the United States from the Supreme Court of the State of California, as provided by law; and

It Is Further Ordered that the clerk of the Supreme Court of the State of California shall have prepared and prepare and certify a transcript of the entire record and proceedings, including the evidence and the judgment and this order in said case and transmit the same to the Supreme Court of the United States at Washington, D. C., so

that the Supreme Court of the United States and the Clerk thereof shall have the same within sixty days from this date.

Dated February 25, 1946.

Phil S. Gibson, Chief Justice of the Supreme Court of the State of California.

[fols. 257-259] Citation in usual form showing service on Ray L. Chesebro, filed February 26, 1946, omitted in printing.

[fols. 260-263] Bond on appeal for $500.00 approved and filed February 26, 1946, omitted in printing.

[fols. 264-265] IN THE SUPREME COURT OF CALIFORNIA

[Title omitted]

ORDER ENLARGING THE TIME TO DOCKET AND FILE THE RECORD ON APPEAL—Filed April 24, 1946

Upon good cause being shown in the Affidavit of Robert H. Wallis, attorney for the Appellant, The Gospel Army, the time to file the record and return date of said citation is enlarged for a period of five (5) days, ending May 2, 1946.

Signed and dated this 24th day of April, 1946.

Gibson, Chief Justice of the Supreme Court of the State of California.

[File endorsement omitted.]

[fol. 266] IN THE SUPREME COURT OF CALIFORNIA

[Title omitted]

AFFIDAVIT OF ROBERT H. WALLIS

STATE OF CALIFORNIA,
County of Los Angeles, ss:

ROBERT H. WAL[illegible] being first duly sworn, deposes and says:

That he is the attorney of record for The Gospel Army in the above entitled matter, and that on the 25th day of February, 1946, citation was signed by the Chief Justice of the

Supreme Court of the State of California, being returnable sixty (60) days thereafter, which time expires April 26, 1946, the time required under the rules of the Supreme Court of the United States to docket said appeal.

Affiant further says that the original record in this matter was forwarded by the Clerk of the Supreme Court of California to the office of said court in Los Angeles, California, for the purpose of permitting affiant to have a copy of the transcript of the testimony made to be included in the record on appeal; that thereafter, and about ten (10) days prior [fol. 267] to the execution of this affidavit, affiant numbered and prepared the record for transmission to the office of the Supreme Court of California in San Francisco with the exception of the index, as required by the rules of the Supreme Court of the United States; that said affiant made arrangements for the said index to be prepared and delivered to the office of the Clerk of the Supreme Court in Los Angeles, California, but through an inadvertence and misunderstanding, said index was not delivered until April 22, 1946, and the said record on appeal has been held in Los Angeles awaiting receipt of said index.

That since preparing the aforesaid record as mentioned herein, affiant has been continually engaged in six hearings before the Contractors' Commission, and did not learn until the 22nd day of April, 1946, that said index had not been filed.

That affiant is informed and believes that said complete record is now in the office of the Clerk of the Supreme Court of the State of California at its office in San Francisco, California, but will not reach the office of the Clerk of the Supreme Court of the United States within the 60 day period, which expires on April 26, 1946, and that an enlargement of said return day of said citation is necessary.

Robert H. Wallis.

Subscribed and sworn to before me this 23rd day of April, 1946. I, A. Merrill, Notary Public in and for said County and State. My commission expires November 25, 1947.

[fol. 268] [File endorsement omitted.]

[fol. 269] IN THE SUPREME COURT OF CALIFORNIA

[Title omitted]

PRAECIPE FOR TRANSCRIPT OF RECORD—Filed February 26, 1946

To the Clerk of the Supreme Court of the State of California:

You are requested to prepare the following record on appeal to the Supreme Court of the United States in the above entitled case:

1. The amended complaint filed in the Superior Court.
2. The Defendant's answer to plaintiff's amended complaint.
3. Findings of fact and conclusions of law of the trial court.
4. The judgment of the Superior Court.
5. The Reporter's Transcript of the evidence submitted and all proceedings in the trial.

. . . . . .

[fol. 270] 9. Order of the Supreme Court transferring the appeal to the Supreme Court.
10. The opinion of the Supreme Court (majority opinion).
11. Dissenting opinion of Justice Carter, concurred in by Justice Schauer.
12. Dissenting opinion of Justice Edmonds.

. . . . . .

14. Order denying rehearing.
15. Minutes of the Supreme Court of California in said case.
16. Remittitur.
17. Petition for allowances of appeal.
18. Statement of jurisdiction on appeal.
19. Assignment of errors.
20. Prayer for reversal.
21. Order allowing appeal.

. . . . . .

24. Citation and proof of service thereof.
25. The Praecipe.
26. Proof of service on appellees of copy of petition for [fol. 271] allowance of appeal, jurisdictional statement, assignment of errors and notice to appellees of their right to make opposition to jurisdictional statement or file motion to dismiss or affirm with Clerk of Court possessed of the Record.
27. Copy of Cost Bond.

Attention is called to Subdivision 3 of Rule 10 of the United States Supreme Court which reads:

> "No case will be heard until a record, containing in itself, and not by reference, all papers, exhibits, depositions, or other proceedings which are necessary to the hearing, shall be filed."

Compliance with rule is requested.

Robert H. Wallis, Attorney for Appellant, The Gospel Army.

[fols. 272-273] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 274] IN THE SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS AND DESIGNATION RE RECORD—Filed May 23, 1946

Pursuant to Rule 13, subdivision 9 of the Revised Rules of the above entitled court, appellant files with the Clerk of said Court its statement of points which it intends to rely upon; its designation of those parts of the record which it thinks are unnecessary for the consideration thereof, together with proof of service of said statement and designation on appellees, as follows:

Points Upon Which Appellant Intends to Rely are:

1. The Charities and Relief Ordinance of the City of Los Angeles (No. 77,000), as a whole is violative of the Fourteenth Amendment to the Constitution of the United [fol. 275] States in that the plan and purpose therein erected, by numerous sections and provisions, so restrains and conditions the exercise of the right of religious free-

dom as to render such exercise impossible by any individual or religious organization, unless and until such organization shall have been approved by said City's Board of Social Service Commissioners and that said ordinance authorizes said Board to approve or refuse to approve any such organization arbitrarily, capriciously, unreasonably and upon the mere whimsy of its members and it provides no rule or standard by which such decision shall be governed.

2. Said ordinance violates the right of freedom of religion and the exercise thereof as guaranteed by said Fourteenth Amendment in its immunities or privileges clause, in that it arbitrarily segregates and classes and regulates as purely secular an integral activity and element of religion and the exercise thereof, to wit, the securing and dispensing of money and goods charitably, in that said ordinance empowers its administrative Charities and Relief Board of Commissioners to determine by standards to be established by said Board and not otherwise, whether the charities being, or to be, dispensed by any person or religious organization is a part of his or its religious activities.

[fol. 276] 3. Said Board has established such standard and has ruled that if any part of the monies or articles which are donated to be used for religious or charitable purposes are given to colporteurs or to other solicitors of the organization for whom they were solicited to pay such colporteurs' expenses such activities are not religious, and appellant will contend that this standard and rule is unreasonable, arbitrary and an infringement of the privileges or immunities clause and the due process clause of said Fourteenth Amendment.

4. Dispensing of charity is an integral part of religion and that religion cannot be segregated into two segments, one, the preaching of the gospel and the other, practicing its teachings, among the most sacred and essential of which is charity, and said ordinance violates appellant's right to freedom of religion because it divorces its charities and the charities of all other religious organizations from the exposition and preaching of their religion, and is therefore null and void, as infringing the said Fourteenth Amendment's guaranty of freedom of religion.

Hence appellant will contend that in legal effect each provision of said ordinance, as applied to a religious organization and its colporteurs is intended to apply to their religious activities.

[fol. 277] 5. Even if the collection of money and goods to be dispensed as charities could be regarded and legally classed as a business, as said ordinance classes and treats said activity, said provisions are violative of the due process clause of the Federal Constitution in that they are unreasonable, unnecessarily burdensome, time-consuming and arbitrary.

6. The following, among others, are provisions of said ordinance, each of which creates unreasonable, time-consuming and oppressive prior restraints upon the exercise of the right of freedom of religion:

(a) Said ordinance requires churches and other religious organizations to maintain "a system of accounting whereby all donations to it and all disbursements made by it are entered upon the books of record of its treasurer or other financial officer" in order that solicitations in any form may be made in Los Angeles on behalf of religious activities by colporteurs or solicitors, if they receive any part of the donations as compensation; also as a prerequisite to such solicitation copies of such records must be supplied to the Board on its request.

(b) Said ordinance prohibits any solicitation for religious charities of money or goods unless the colporteur or solicitor shall have first obtained a license or permit from said administrative board.

[fol. 278] (c) For such license one class of colporteurs, (called solicitors), must pay a nominal fee and another class (called promoters), must pay a license fee of $25.00 and post a bond in the sum of $2,000.00.

(d) All such colporteurs or solicitors are required to file an application for license to solicit at least ten days prior to the date on which they intend to begin soliciting.

(e) Said application must be on a form furnished by said Board and must set forth information concern-

ing nine subjects, including a copy of a resolution of an organization which authorized the contemplated solicitation.

(f) Said ordinance authorizes said Board to require additional information upon any other subject and to repeat such requirement without limit as to time or subject matter, or the number of requests, and to captiously and arbitrarily refuse to issue a permit to the applicant.

(g) Said ordinance authorizes said Board to place in such license or permit, if issued, a statement that the solicitation is not approved and any other information which the Board considers might interest the public as to the matter involved, derived from its private investigation or otherwise secured.

(h) Said ordinance requires the solicitor to show or [fol. 279] read the contents of said permit to all persons solicited for donation, before accepting any donation; said contents would necessarily be voluminous and involved, since it contains the information provided in the application and whatever the Board sees fit to add, and it might well be derogatory to the cause and purpose of the solicitation for religious or charitable purposes.

(i) The solicitor must file a written report with said Board stating in detail all expenses connected with the solicitation and "exactly" for what uses and the manner in which all contributions were disbursed, which report must be signed by the solicitor and the Association, religious or secular, for which solicitations were made.

Appellant will contend that each and all of the foregoing provisions are unreasonable, oppressive, time-consuming, prior restraints upon the exercise of appellant's freedom of religion and hence violative of said Fourteenth Amendment, and also violative of the due process clause thereof and will make the same contention concerning other provisions of a similar character regulating the obtaining of licenses by solicitors designated as "promoters" by said ordinance, the procedure and conduct of promoters and reports required to be made by them.

[fol. 280] 7. Said ordinance repeatedly delegates to said City's administrative Board power to legislate by regulations without providing any standard by which said Board shall be governed, thus giving said Board power to act arbitrarily, capriciously and with discrimination against those who for any reason are in disfavor with its members and all such provisions are violative of the due process and equal protection of the laws clauses of said Fourteenth Amendment and said Board has exercised such unbridled powers and discriminated against appellant.

Examples of such provisions as to which the foregoing point will be argued are:

(a) Section 44.16 of said ordinance authorizes the Board in issuing a permit or license to make its own investigation of the applicant and the religious organization for whom such applicant would solicit, and "if in the opinion of the Board the public interest would be thereby subserved to give publicity to its findings in such manner as it may deem best to advise the public of the facts in the case," if "in the opinion of the Board" such solicitation "is calculated to give the impression that the same is" in whole or in part "for a charitable purpose."

Appellant will contend that these provisions empower said Board to nullify efforts by its solicitors or any soli-
[fol. 281] tors to secure donations in furtherance of religious or charitable activities and to discriminate against them.

(b) Concerning the class of solicitors called "promoters" the ordinance authorizes the administrative Board to require the applicant to furnish "such information as may be required by the Board." And in that behalf no standard or limitation is provided and the Board is empowered to deny such license if any of the above and many other requirements are not met.

(c) Said Board is authorized to make such investigation of the applicant and "his affairs" as "they may deem advisable," and to consider the results thereof in determining whether to issue or deny a license, and no provision is made for any hearing concerning matters so investigated and no standard as

to matters to be considered is provided to guide the Board in making its decision.

8. Certain provisions of said ordinance violate the equal protection of the laws clause of said Fourteenth Amendment and are arbitrarily and unreasonably discriminatory in that:

(a) Section 44.16 of said ordinance exempts from the provisions of said ordinance religious organiza-
[fol. 282] tions whose solicitations are "made purely for evangelical, missionary or religious purposes" but applies said provisions to such organizations if any part of such solicitations is for religio-charitable purposes.

(b) Said ordinance (Section 44.19), arbitrarily and unreasonably creates a special class of solicitors designated as "promoters", and imposes upon said class and the religious organization for which they solicit additional prior restraints and burdens not required of other solicitors, such as payment of a license fee of $25.00, filing a bond in the sum of $2000.00 to safeguard the public from fraud, the filing of long and involved statements and reports by the applicants and by said religious organizations, and the right of an administrative Board to revoke such license when it thinks best.

(c) That said ordinance (Sec. 44.01), arbitrarily and unreasonably excepts from said class of promoters those who are employed by a "social service agency endorsed by the Board of Social Service Commissioners" of said City, for giving of which endorsement no standard is provided by said ordinance.

(d) That said ordinance (Sec. 44.03), authorizes said City's administrative Board to "endorse" charitable organizations and to thereby relieve such organi-
[fol. 283] zations from all obligations and requirements pertaining to solicitors, thus denying to similar organizations the same immunities and privileges and such administrative Board is empowered to endorse or withhold its endorsement arbitrarily and without reason.

9. Certain provisions of said ordinance are violative of said Fourteenth Amendment because they take property

without due process of law from appellant and all others similarly situated in that appellant maintains a store through which donated articles and goods not dispensed as charities are sold, and the proceeds are used in appellant's religious activities, and said ordinance applies to said store its Junk Dealers and Second Hand Dealers regulations, which are unreasonable, burdensome and oppressive even as applied to junk and second hand dealers, but especially so as applied to a charitable or religious organization whose activities are not presumed to require regulation to prevent fraud.

Also, the above mentioned prior restraints upon the solicitation of money to be used in appellant's religious activities deprive appellant of property without due process of law in that their enforcement would compel appellant [fol. 284] to close said store and lose the income therefrom, as appellant will contend and expects to show.

10. As construed and applied by said administrative Board of said City of Los Angeles and officers thereof to and against appellant, each of the above named provisions of said ordinance is violative of said Fourteenth Amendment in the respects above set forth in that such administrators have declared and ruled that appellant is, and all of its religious activities pertaining to solicitation of money and goods are, for charitable purposes and are subject to said ordinance and all of its provisions, and have threatened to prosecute appellant and its solicitors, officers and agents should the latter fail to comply therewith in any respect.

11. Said ordinance attempts to exercise the police power but whenever the exercise of the police power conflicts with or violates constitutional right the latter must prevail.

12. As an exercise of the police power said ordinance is void because its purpose, to-wit, to prevent fraud, can be accomplished by the enforcement of state punitive laws which amply cover all frauds;

[fol. 285] It is void for the further reason that its provisions, above set forth, and others of the same type and import, are unreasonably and unecessarily burdensome, costly and time-consuming, and can accomplish only one purpose, namely, to prevent the annoyance to business men and citizens of solicitations for charitable and religious

causes, and to enable the City's administrative Board to confine such solicitations to a few favored charitable and religious associations and organizations.

13. Said ordinance in effect, and as construed and applied in this case, prohibits solicitations for charity or religion by any individual and by all associations and organizations except such as are approved by said administrative Board in the exercise of unrestricted and unbridled discretion. Where reasonable regulation suffices to accomplish the intended purpose prohibition is violative of the due process clause of the Fourteenth Amendment.

14. The right to collect money or goods and the right to freely dispense them for charitable purposes is, in itself, within the privileges or immunities clause of said Fourteenth Amendment, and said ordinance as a whole, its plan and purpose, and each of its regulatory sections create prior [fol. 286] restraints in conflict with said clause and which are so arbitrary, unreasonable and needlessly burdensome as to violate the due process clause of said amendment in that they singly and collectively empower said administrative Board to hinder and prevent the acquirement of property or the disposition of such property upon unreasonable grounds based on information acquired and kept in secrecy without affording the charitable person or organization opportunity to be heard in opposition to such procedure and actions.

Designation of Parts of the Record Thought Unnecessary

Appellant thinks that all parts of the record are necessary except the following, which it designates as unecessary for the consideration of said points:

1. Order transferring appeal to the Supreme Court.

2. Petition for allowance of appeal.

3. Appellees' Statement of Grounds Against Jurisdiction and Motions.

4. Reporter's Transcript.

Robert H. Wallis, Attorney for Appellant.

[fol. 287] Received copy of the within Statement of Points and Designation Re Record by appellant in the within entitled action this 16th day of May, 1946.

Ray L. Chesebro, Wilbur Bassett, Attorneys for Appellees.

[fols. 288-289] [File endorsement omitted.]

[fol. 290] IN THE SUPREME COURT OF THE UNITED STATES

APPELLEES' DESIGNATION OF PORTIONS OF THE RECORD TO BE PRINTED—Filed May 24, 1946

Now come the adverse parties, the Appellees herein, and under Rule 13, subdivision 9 of the above-entitled Court, file with the clerk of said court this designation of those parts of the record herein which the said Appellees think material, to wit:

I

1. Order transferring appeal to the Supreme Court.

2. Petition for allowance of appeal.

3. Appellees' Statement of Grounds Against Jurisdiction and Motions.

4. Reporter's Transcript.

[fol. 291] 5. All of the records, orders and documents on file herein.

Ray L. Chesebro, City Attorney; Bourke Jones, Assistant City Attorney; Wilbur Bassett, Deputy City Attorney, Attorneys for Appellees.

[fol. 292] STATE OF CALIFORNIA,
County of Los Angeles, ss:

Paul K. Duffy, being sworn, deposes and says: That he is and at the time of service of the papers herein referred to, over eighteen years of age, and not a party to the within entitled action; that he personally served the within Appellees' Designation of Portions of the Record to be Printed on the hereinafter named appellant, by delivering to and

leaving a copy to and with Almira G. Cassil in the city of Long Beach, California at 328 American Ave. Almira G. Cassil stated at the time of said service that she was the secretary of Robert H. Wallis, attorney for the Appellant in the above intitled action. She further stated that the said Robert H. Wallis was out of the state and would continue to be out of the state for at least thirty days because of a failure of a local bank for which the said Robert H. Wallis is the attorney. His services for the said bank requiring his presence in Washington, D. C.

The date of the above mentioned service upon Almira G. Cassil was May 21, 1946.

Paul K. Duffy.

Subscribed and sworn to before me this 22nd day of May, 1946. Stanley Matthews, Notary Public in and for the County of Los Angeles, State of California. (Seal.)

[fol. 293] 21 May 46. Receipt is hereby acknowledged of copy of Appellees' Designation of Portions of the Record to be Printed.

Almira G. Cassil, Secretary to Robert H. Wallis, Attorney for Appellant.

[fol. 294] [File endorsement omitted.]

[fol. 295] SUPREME COURT OF THE UNITED STATES

ORDER POSTPONING FURTHER CONSIDERATION OF THE QUESTION OF JURISDICTION—June 3, 1946

The statement of jurisdiction in this case having been submitted and considered by the Court, further consideration of the question of the jurisdiction of this Court is postponed to the hearing of the case on the merits.

Mr. Justice Jackson took no part in the consideration or decision of this question.

Endorsed on Cover: File No. 50,919. California, Supreme Court. Term No. 1031. The Gospel Army, a Corporation, Appellant, v. The City of Los Angeles, Board of Social Service Commissioners, Department of Social Service, and Dan O. Hoye, City Controller. Filed May 9, 1946. Term No. 103 O. T. 1946.